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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<https://www.sos.texas.gov/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.texas.gov

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.texas.gov>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

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

Appointments

Appointments for July 16, 2020

Appointed to the Texas Municipal Retirement System Board of Trustees, for a term to expire February 1, 2025, Bill J. Philibert of Deer Park, Texas (Mr. Philibert is being reappointed).

Appointed to the Texas Municipal Retirement System Board of Trustees, for a term to expire February 1, 2025, Robert B. "Bob" Scott of Garland, Texas (replacing Julie Oakley of Spicewood, whose term expired).

Appointments for July 21, 2020

Appointed to the Texas Lottery Commission, for a term to expire February 1, 2025, James H.C. "Jamey" Steen of Houston, Texas (replacing James "Winston" Krause of Austin, whose term expired).

Designated as presiding officer of the Texas Lottery Commission, for a term to expire at the pleasure of the Governor, Robert G. Rivera of Dallas (Mr. Rivera is replacing James "Winston" Krause of Austin).

Greg Abbott, Governor

TRD-202002988



Proclamation 41-3751

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, certified on July 13, 2020, that exceptional drought conditions posed a threat of imminent disaster in Bailey, Briscoe, Carson, Castro, Dallam, Deaf Smith, Floyd, Gaines, Gray, Hale, Hansford, Hartley, Hutchinson, Lamb, Motley, Oldham, Ochiltrie, Parmer, Randall, Roberts, Swisher, Terry, and Yoakum counties. I hereby certify that exceptional drought conditions continue to pose a threat of imminent disaster in Bailey, Briscoe, Carson, Castro, Dallam, Deaf Smith, Floyd, Gaines, Gray, Hale, Hansford, Hartley, Hutchinson, Lamb, Motley, Oldham, Ochiltrie, Parmer, Randall, Roberts, Swisher, Terry, and Yoakum counties, and that the conditions also now threaten Andrews and Wheeler counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Andrews, Bailey, Briscoe, Carson, Castro, Dallam, Deaf Smith, Floyd, Gaines, Gray, Hale, Hansford, Hartley, Hutchinson, Lamb, Motley, Oldham, Ochiltrie, Parmer, Randall, Roberts, Swisher, Terry, Wheeler, and Yoakum counties based on the existence of such threat.

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

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

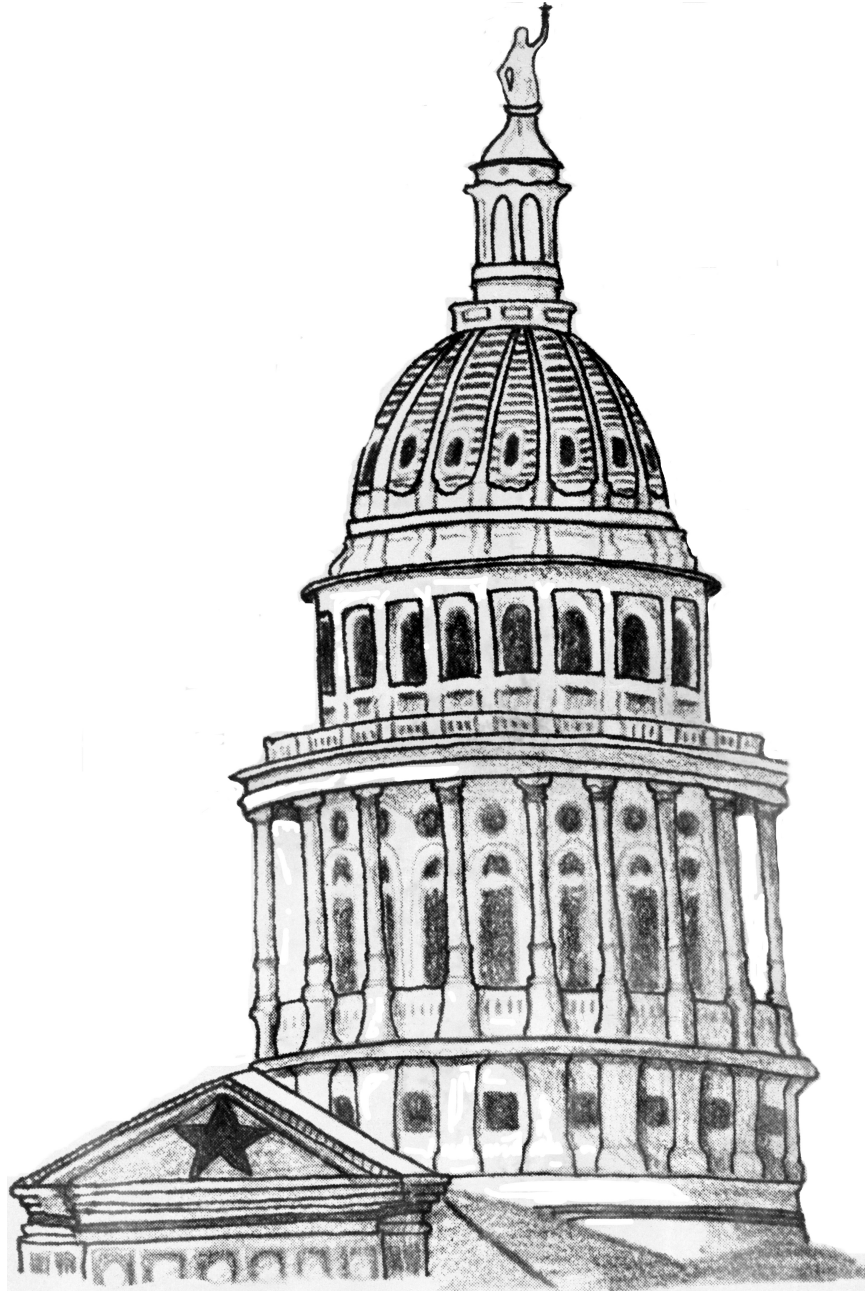
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of July, 2020.

Greg Abbott, Governor

TRD-202002989





EMERGENCY RULES

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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY

HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.1

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.1 for a 60-day period. The text of the emergency rule was originally published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2279).

Filed with the Office of the Secretary of State on July 21, 2020.

TRD-202002987

Karen Ray

Chief Counsel

Health and Human Services Commission

Original effective date: March 25, 2020

Expiration date: September 20, 2020

For further information, please call: (512) 834-4591



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 30. MEDICAID HOSPICE PROGRAM

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

40 TAC §30.14

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40 Texas Administrative Code, Chapter 30, Medicaid Hospice Program, an amendment to §30.14(e), concerning an emergency rule in response to COVID-19 in order to allow face-to-face reassessments for recertification to be conducted as a telemedicine medical service. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency

rules adopted under Texas Government Code §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency amendment to §30.14, concerning Certification of Terminal Illness and Record Maintenance.

To protect individuals receiving Medicaid hospice services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency amendment to §30.14(e) to allow a hospice physician or hospice advanced practice registered nurse to conduct a face-to-face assessment of an individual as a telemedicine medical service, as defined in Texas Government Code §531.001(8), if the sole purpose of the assessment is for hospice recertification. This amendment will reduce the risk of transmitting COVID-19.

STATUTORY AUTHORITY

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

The amendment implements Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§30.14. *Certification of Terminal Illness and Record Maintenance.*

- (a) Timing of certification.

(1) If a hospice does not obtain the written certification statement required by paragraph (2) of this subsection within two days after a period of care begins, the hospice must obtain an oral certification statement that meets the requirements of this section no later than two days after the period begins. A period of care is described in §30.12 of this subchapter (relating to Duration of Hospice Care Coverage: Election Periods).

(2) For the initial period of care, a hospice must obtain a signed and dated Medicaid Hospice Program Physician Certification of Terminal Illness form that meets the requirements of this section before the hospice submits an initial request for payment, but no more than 15 days before the period begins. For a period of care after the initial period, a hospice must obtain a signed and dated Medicaid Hospice Program Physician Certification of Terminal Illness form that meets the requirements of this section before the period expires, but no more than 15 days before the period begins.

(b) Content of certification statement. An oral or written certification statement must:

(1) specify that an individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course;

(2) include a narrative that clearly identifies the reasons the individual is considered terminally ill; and

(3) include clinical information that supports the medical prognosis, which may be provided orally for an oral certification statement and must be provided with accompanying documentation for a written certification statement.

(c) Sources of certification. The hospice must obtain a written or oral certification statement required by subsection (a) of this section from:

(1) for the initial period of care:

(A) the medical director of the hospice or the physician who is a member of the hospice interdisciplinary group; and

(B) the individual's attending physician, if the individual has an attending physician; and

(2) for a period of care after the initial period, a physician described in paragraph (1)(A) of this subsection.

(d) Documentation.

(1) After the hospice receives a certification statement, hospice staff must:

(A) for an oral certification statement:

(i) make an entry that meets the requirements of paragraph (2) of this subsection in the individual's hospice record; and

(ii) if the individual resides in a nursing facility or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), notify the nursing facility or the ICF/IID of the oral certification; and

(B) for a written certification statement:

(i) file the statement and supporting documentation in the individual's hospice record; and

(ii) if the individual resides in a nursing facility or an ICF/IID, provide the nursing facility or the ICF/IID with a copy of the written certification.

(2) An entry made in an individual's hospice record in accordance with paragraph (1)(A)(i) of this subsection must include the

name of the physician who made the oral certification, the clinical information that supports the prognosis, and the date the hospice received the certification. The hospice staff person who makes the entry into the individual's hospice record must sign and date the entry.

(e) Face-to-face assessment.

(1) To determine an individual's continued eligibility for hospice care for a period of care after the initial period, as described in §30.12 of this subchapter, a hospice physician or hospice advanced practice registered nurse must perform a face-to-face assessment of the individual.

(A) [(4)] The hospice must ensure a face-to-face assessment is performed before each subsequent period of care begins, but no more than 30 days before the period begins.

(B) [(2)] For an individual who is dually eligible for Medicare and Medicaid, a Medicare face-to-face encounter satisfies the requirement for a face-to-face assessment required by this subsection.

(2) During a public health disaster, as defined in Texas Health and Safety Code §81.003, if the face-to-face assessment conducted by a hospice physician or hospice advanced practice registered nurse is for the sole purpose of hospice recertification, the assessment may occur as a telemedicine medical service as defined in Texas Government Code §531.001(8). Conducting the recertification as a telemedicine medical service is the preferred option if it is available and the hospice physician or advance practice registered nurse determines it can be used to certify the individual's terminal diagnosis and life expectancy.

(f) Records.

(1) The hospice must retain in an individual's hospice record documentation to support the services provided by the hospice, including:

(A) the documentation required by subsection (d) of this section;

(B) a current Minimum Data Set assessment if the individual resides in a nursing facility, or a level-of-need assessment if the individual resides in an ICF/IID; and

(C) documentation of a face-to-face assessment or a face-to-face encounter described in subsection (e) of this section.

(2) If an individual resides in a nursing facility or ICF/IID, the hospice must provide a copy of the documentation described in paragraph (1) of this subsection to the nursing facility or ICF/IID in which the individual resides.

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

Filed with the Office of the Secretary of State on July 18, 2020.

TRD-202002953

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: July 18, 2020

Expiration date: November 14, 2020

For further information, please call: (512) 407-3269



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission proposes amendments to §18.31, regarding Adjustments to Reporting Thresholds.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2021, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in the statutes listed in Figures 1 through 4 of 18.31 are also duplicated in numerous Commission rules, and therefore those rules must be similarly adjusted so they are consistent; amendments to these rules have been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, they will: not

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

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rule affects Title 15 of the Election Code.

§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

Figure 1: 1 TAC §18.31(a)

~~[Figure 1: 1 TAC §18.31(a)]~~

Figure 2: 1 TAC §18.31(a)

~~[Figure 2: 1 TAC §18.31(a)]~~

Figure 3: 1 TAC §18.31(a)

~~[Figure 3: 1 TAC §18.31(a)]~~

Figure 4: 1 TAC §18.31(a)

~~[Figure 4: 1 TAC §18.31(a)]~~

(b) The changes made by this rule apply only to conduct occurring on or after the effective date of this rule.

(c) ~~[(b)]~~ The effective date of this rule is January 1, 2021 [2020].

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 July 20, 2020.

TRD-202002967



CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 20. Specifically, the Commission proposes amendments to §20.62, regarding Reporting Staff Reimbursement, and §20.65, regarding Reporting No Activity; §20.217, regarding Modified Reporting, §20.219, regarding Content of Candidate's Sworn Report of Contributions and Expenditures, §20.220, regarding Additional Disclosure for the Texas Comptroller of Public Accounts, and §20.221, regarding Special Pre-Election Report by Certain Candidates; §20.275, regarding Exception from Filing Requirement for Certain Local Officeholders, and §20.279, regarding Contents of Officeholder's Sworn Report of Contributions and Expenditures; §20.301, regarding Thresholds for Campaign Treasurer Appointment, §20.303, regarding Appointment of Campaign Treasurer, §20.313, regarding Converting to a General-Purpose Committee, §20.329, regarding Modified Reporting, §20.331, regarding Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures, and §20.333, regarding Special Pre-Election Report by Certain Specific-Purpose Committees; §20.401, regarding Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee, §20.405, regarding Campaign Treasurer Appointment for a General-Purpose Political Committee, §20.433, regarding Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures, §20.434, regarding Alternate Reporting Requirements for General-Purpose Committees, and §20.435, regarding Special Pre-Election Reports by Certain General-Purpose Committees; §20.553, regarding County Executive Committee Accepting Contributions or Making Expenditures Totaling \$25,000 or Less, and §20.555, regarding County Executive Committee Accepting Contributions or Making Expenditures That Exceed \$25,000.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2021, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended

rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.62, §20.65

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.62. *Reporting Staff Reimbursement.*

(a) Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$6,370 [~~\$6,130~~] during the reporting period may be reported as follows IF the reimbursement occurs during the same reporting period that the initial expenditure was made:

(1) the amount of political expenditures that in the aggregate exceed \$190 [~~\$180~~] and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made and the dates and purposes of the expenditures; and

(2) included with the total amount or a specific listing of the political expenditures of \$190 [~~\$180~~] or less made during the reporting period.

(b) Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows:

(1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee;

(2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and

(3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee.

§20.65. Reporting No Activity.

(a) As a general rule, a candidate or officeholder must file a report required by Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File) even if there has been no reportable activity during the period covered by the report.

(b) This general rule does not apply to:

- (1) special pre-election reports;
- (2) special session reports; or

(3) a local officeholder who does not have a campaign treasurer appointment on file and who does not accept more than \$930 [~~\$900~~] in political contributions or make more than \$930 [~~\$900~~] in political expenditures during the reporting period.

(c) If a required report will disclose that there has been no reportable activity during the reporting period, the filer shall submit only those pages of the report necessary to identify the filer and to swear to the lack of reportable activity.

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 July 20, 2020.

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J.R. Johnson

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §§20.217, 20.219 - 20.221

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute; and Texas

Government Code §2155.003, which requires the Commission to adopt rules to implement that section.

The proposed amended rules affect Title 15 of the Election Code.

§20.217. Modified Reporting.

(a) An opposed candidate who does not intend to accept more than \$930 [~~\$900~~] in political contributions or make more than \$930 [~~\$900~~] in political expenditures (excluding filing fees) in connection with any election in an election cycle may choose to file under the modified schedule.

(b) Under the modified schedule, an opposed candidate is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a candidate must file a declaration of intent not to accept more than \$930 [~~\$900~~] in political contributions or make more than \$930 [~~\$900~~] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the candidate understands that if either one of those limits is exceeded, the candidate will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the candidate's campaign treasurer appointment.

(e) To file under the modified schedule, a candidate must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) If an opposed candidate exceeds either of the \$930 [~~\$900~~] limits, the candidate must file reports under §20.213 of this title (relating to Pre-Election Reports) and §20.215 of this title (relating to Runoff Report).

(g) If an opposed candidate exceeds either of the \$930 [~~\$900~~] limits after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise the period begins on the first day after the period covered by the last report required by this subchapter (other than a special pre-election report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the day the candidate exceeded one of the limits for modified reporting.

§20.219. Content of Candidate's Sworn Report of Contributions and Expenditures.

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) the candidate's full name;
- (2) the candidate's address;
- (3) the office sought by the candidate, if known;
- (4) the identity and date of the election for which the report is filed, if known;
- (5) the campaign treasurer's name;
- (6) the campaign treasurer's telephone number;
- (7) the campaign treasurer's residence or business street address;

(8) for each political committee from which the candidate received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):

- (A) the committee's full name;
- (B) the committee's address;
- (C) identification of the political committee as a general-purpose or a specific-purpose committee;
- (D) the full name of the committee's campaign treasurer; and
- (E) the address of the committee's campaign treasurer;

(9) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

- (A) the full name of the business to which the expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(10) for each person from whom the candidate accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than \$90 in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than \$90 in value:

- (A) the full name of the person making the contribution;
- (B) the address of the person making the contribution;
- (C) the total amount of contributions;
- (D) the date each contribution was accepted; and
- (E) a description of any in-kind contribution;

(11) for each person from whom the candidate accepted a pledge or pledges to provide more than \$90 in money or goods or services worth more than \$90:

- (A) the full name of the person making the pledge;
- (B) the address of the person making the pledge;
- (C) the amount of each pledge;
- (D) the date each pledge was accepted; and
- (E) a description of any goods or services pledged; and
- (F) the total of all pledges accepted during the period for \$90 and less from a person, except those reported under subparagraphs (A) - (E) of this paragraph;

(12) for each person making a loan or loans to the candidate for campaign purposes if the total amount loaned by the person during the period is more than \$90:

- (A) the full name of the person or financial institution making the loan;
- (B) the address of the person or financial institution making the loan;

- (C) the amount of the loan;
- (D) the date of the loan;
- (E) the interest rate;
- (F) the maturity date;
- (G) the collateral for the loan, if any; and
- (H) if the loan has guarantors:
 - (i) the full name of each guarantor;
 - (ii) the address of each guarantor;
 - (iii) the principal occupation of each guarantor;
 - (iv) the name of the employer of each guarantor; and
 - (v) the amount guaranteed by each guarantor;

(13) the total amount of loans accepted during the period for \$90 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for a loan reported under paragraph (12) of this section;

(14) for political expenditures made during the reporting period that total more than \$190 [~~\$180~~] to a single payee, other than expenditures reported under paragraph (9) of this section:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(15) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure;
- (E) a declaration that the expenditure was made out of personal funds;
- (F) a declaration that reimbursement from political contributions is intended; and
- (G) the amount of the expenditure;

(16) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (9) of this section:

- (A) the date of each expenditure;
- (B) the full name of the person to whom the expenditure was made;
- (C) the address of the person to whom the expenditure was made;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(17) for each other candidate or officeholder who benefits from a direct campaign expenditure made by the candidate during the reporting period:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(18) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(19) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(20) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(21) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(22) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(23) the full name and address of each person from whom an amount described by paragraph (19), (20), (21), or (22) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(24) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$90 and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$190 [~~\$180~~] and less; and

(E) the total amount of all political expenditures; and

(25) an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.220. *Additional Disclosure for the Texas Comptroller of Public Accounts.*

(a) For purposes of this section and §2155.003(e) of the Government Code, the term "vendor" means:

(1) a person, who during the comptroller's term of office, bids on or receives a contract under the comptroller's purchasing authority that was transferred to the comptroller by §2151.004 of the Government Code; and

(2) an employee or agent of a person described by subsection (a)(1) of this section who communicates directly with the chief clerk, or an employee of the Texas Comptroller of Public Accounts who exercises discretion in connection with the vendor's bid or contract, about a bid or contract.

(b) Each report filed by the comptroller or a specific-purpose committee created to support the comptroller, shall include:

(1) for each vendor whose aggregate campaign contributions equal or exceed \$610 [~~\$590~~] during the reporting period, a notation that:

(A) the contributor was a vendor during the reporting period or during the 12 month period preceding the last day covered by the report; and

(B) if the vendor is an individual, includes the name of the entity that employs or that is represented by the individual; and

(2) for each political committee directly established, administered, or controlled by a vendor whose aggregate campaign contributions equal or exceed \$610 [~~\$590~~] during the reporting period, a notation that the contributor was a political committee directly established, administered, or controlled by a vendor during the reporting period or during the 12 month period preceding the last day covered by the report.

(c) The comptroller, or a specific-purpose committee created to support the comptroller, is considered to be in compliance with this section if:

(1) each written solicitation for a campaign contribution includes a request for the information required by subsection (b) of this section; and

(2) for each contribution that is accepted for which the information required by this section is not provided at least one oral or written request is made for the missing information. A request under this subsection:

(A) must be made not later than the 30th day after the date the contribution is received;

(B) must include a clear and conspicuous statement requesting the information required by subsection (b) of this section;

(C) if made orally, must be documented in writing; and

(D) may not be made in conjunction with a solicitation for an additional campaign contribution.

(d) The comptroller, or a specific-purpose committee created to support the comptroller, must report the information required by subsection (b) of this section that is not provided by the person making the political contribution and that is in the comptroller's or committee's records of political contributions or previous campaign finance reports required to be filed under Title 15 of the Election Code filed by the comptroller or committee.

(e) If the comptroller, or a specific-purpose committee created to support the comptroller, receives the information required by this section after the filing deadline for the report on which the contribution is reported the comptroller or committee must include the missing information on the next required campaign finance report.

(f) The disclosure required under subsection (b) of this section applies only to a contributor who was a vendor or a political committee directly established, administered, or controlled by a vendor on or after September 1, 2007.

§20.221. *Special Pre-Election Report by Certain Candidates.*

(a) As provided by subsection (b) of this section, certain candidates must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the day before an election. Reports under this section are known as "special pre-election" reports.

(b) An opposed candidate for an office specified by §252.005(1), Election Code, who, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,860 [\$1,800] must file special pre-election reports.

(c) Except as provided in subsection (e) of this section, a candidate must file a special pre-election report so that the report is received by the commission no later than the first business day after the candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(d) If, during the reporting period for special pre-election contributions, a candidate receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a special pre-election report during that period, the candidate must file an additional special pre-election report for each such contribution. Except as provided in subsection (e) of this section, each such special pre-election report must be filed so that it is received by the commission no later than the first business day after the candidate accepts the contribution.

(e) A candidate must file a special pre-election report that is exempt from electronic filing under §254.036(c), Election Code, so that the report is received by the commission no later than 5 p.m. of the first business day after the candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(f) A candidate must file a special pre-election report for each person whose contribution or contributions made during the period for special pre-election reports exceed the threshold for special pre-election reports.

(g) A candidate must also report contributions reported on a special pre-election report on the next semiannual, pre-election, or runoff report filed, as applicable.

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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J.R. Johnson

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



SUBCHAPTER D. REPORTING REQUIREMENTS FOR AN OFFICEHOLDER WHO DOES NOT HAVE A CAMPAIGN TREASURER APPOINTMENT ON FILE

1 TAC §20.275, §20.279

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.275. *Exception from Filing Requirement for Certain Local Officeholders.*

An officeholder is not required to file a semiannual report of contributions and expenditures if the officeholder:

- (1) is required to file with an authority other than the commission;
- (2) does not have a campaign treasurer appointment on file; and
- (3) does not accept more than \$930 [\$900] in political contributions or make more than \$930 [\$900] in political expenditures during the reporting period.

§20.279. *Contents of Officeholder's Sworn Report of Contributions and Expenditures.*

An officeholder's semiannual report of contributions and expenditures required by this subchapter must cover reportable activity during the reporting period and must include the following information:

- (1) the officeholder's full name;
- (2) the officeholder's address;
- (3) the office held by the officeholder;
- (4) for each political committee from which the officeholder received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):
 - (A) the committee's full name;
 - (B) the committee's address;
 - (C) identification of the political committee as a general-purpose or a specific-purpose committee;
 - (D) the full name of the committee's campaign treasurer; and
 - (E) the address of the committee's campaign treasurer;
- (5) on a separate page, the following information for each expenditure from political contributions made to a business in which the officeholder has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:
 - (A) the full name of the business to which the expenditure was made;
 - (B) the address of the business to which the expenditure was made;
 - (C) the date of the expenditure;
 - (D) the purpose of the expenditure; and
 - (E) the amount of the expenditure;
- (6) for each person from whom the officeholder accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than \$90 in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than \$90 in value:
 - (A) the full name of the person making the contribution;
 - (B) the address of the person making the contribution;
 - (C) the total amount of contributions;
 - (D) the date each contribution was accepted; and
 - (E) a description of any in-kind contribution;

(7) for each person from whom the officeholder accepted a pledge or pledges to provide more than \$90 in money or goods or services worth more than \$90:

- (A) the full name of the person making the pledge;
- (B) the address of the person making the pledge;
- (C) the amount of each pledge;
- (D) the date each pledge was accepted; and
- (E) a description of any goods or services pledged;

(8) the total of all pledges accepted during the period for \$90 and less from a person, except those reported under paragraph (7) of this section;

(9) for each person making a loan or loans to the officeholder for officeholder purposes, if the total amount loaned by the person during the period is more than \$90:

- (A) the full name of the person or financial institution making the loan;
- (B) the address of the person or financial institution making the loan;
- (C) the amount of the loan;
- (D) the date of the loan;
- (E) the interest rate;
- (F) the maturity date;
- (G) the collateral for the loan, if any; and
- (H) if the loan has guarantors:
 - (i) the full name of each guarantor;
 - (ii) the address of each guarantor;
 - (iii) the principal occupation of each guarantor;
 - (iv) the name of the employer of each guarantor; and
 - (v) the amount guaranteed by each guarantor;

(10) the total amount of loans accepted during the period for \$90 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (9) of this section;

(11) for political expenditures made during the reporting period that total more than \$190 [~~\$180~~] to a single payee, other than expenditures reported under paragraph (5) of this section:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(12) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

- (A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

- (C) the date of each expenditure;
- (D) the purpose of the expenditure;
- (E) a declaration that the expenditure was made from personal funds;
- (F) a declaration that reimbursement from political contributions is intended; and
- (G) the amount of the expenditure;

(13) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (5) of this section:

- (A) the date of each expenditure;
- (B) the full name of the person to whom the expenditure was made;
- (C) the address of the person to whom the expenditure was made;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(14) for each candidate or other officeholder who benefits from a direct campaign expenditure made by the officeholder during the reporting period:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(15) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(16) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(17) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(18) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(19) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(20) the full name and address of each person from whom an amount described by paragraph (16), (17), (18), or (19) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(21) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$90 and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$190 [~~\$130~~] and less; and

(E) the total amount of all political expenditures; and

(22) an affidavit, executed by the officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

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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J.R. Johnson

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §§20.301, 20.303, 20.313, 20.329, 20.331, 20.333

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.301. *Thresholds for Campaign Treasurer Appointment.*

(a) A specific-purpose committee may not accept political contributions exceeding \$910 [~~\$870~~] and may not make or authorize political expenditures exceeding \$910 [~~\$870~~] without filing a campaign treasurer appointment with the appropriate filing authority.

(b) A specific-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$910 [~~\$870~~] to support or oppose a candidate in a primary or general election for an office listed below unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the State Board of Education;
- (4) a multi-county district office; or
- (5) a judicial district office filled by voters of only one county.

§20.303. *Appointment of Campaign Treasurer.*

(a) A specific-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.301(a) of this title (relating to Thresholds for Campaign Treasurer Appointment).

(b) After a specific-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$910 [~~\$870~~] in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the specific-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.313. *Converting to a General-Purpose Committee.*

(a) A specific-purpose committee that changes its operation and becomes a general-purpose committee is subject to the requirements applicable to a general-purpose committee as of the date it files its campaign treasurer appointment as a general-purpose committee with the commission.

(b) The campaign treasurer of a specific-purpose committee that becomes a general-purpose committee must deliver written notice of its change in status to the authority with whom the committee was required to file as a specific-purpose committee.

(c) The notice required under subsection (b) of this section is due no later than the next deadline for filing a report under this subchapter that:

(1) occurs after the committee's change in status; and

(2) would be applicable to the political committee if it were still a specific-purpose committee.

(d) The notice must state that future reports will be filed with the commission.

(e) The notice required under subsection (b) of this section is in addition to the requirement that the new general-purpose committee file a campaign treasurer appointment with the commission before it exceeds \$910 [~~\$870~~] in political expenditures or \$910 [~~\$870~~] in political contributions as a general-purpose committee.

§20.329. *Modified Reporting.*

(a) A specific-purpose committee that would otherwise be required to file pre-election reports and a runoff report, if necessary, may choose to file under the modified schedule if the committee does not intend to accept more than \$930 [~~\$900~~] in political contributions or make more than \$930 [~~\$900~~] in political expenditures (excluding filing fees) in connection with any election in an election cycle.

(b) Under the modified schedule, the campaign treasurer of a specific-purpose committee is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a specific-purpose committee must file a declaration of the committee's intent not to accept more than \$930 [~~\$900~~] in political contributions or make more than \$930 [~~\$900~~] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the committee's campaign treasurer appointment.

(e) To file under the modified schedule, a specific-purpose committee must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) Except as provided by subsection (g) of this section, a specific-purpose committee's campaign treasurer must file pre-election reports and, if necessary, a runoff report under the schedule set out in §20.325 of this title (relating to Pre-election Reports) and §20.327 of this title (relating to Runoff Report) if the committee exceeds either of the \$930 [~~\$900~~] limits for modified reporting.

(g) If a specific-purpose committee exceeds either of the \$930 [~~\$900~~] limits for modified reporting after the 30th day before the election, the committee's campaign treasurer must file a report not later than 48 hours after exceeding the limit.

(1) The period covered by a 48-hour report shall begin either on the day the committee's campaign treasurer appointment was filed (if it is the committee's first report of contributions and expenditures) or on the first day after the period covered by the last report (other than a special pre-election report or special session report) filed under this subchapter, as applicable.

(2) The period covered by a 48-hour report shall continue through the day the committee exceeded one of the limits for modified reporting.

(h) A specific-purpose committee that exceeds either of the \$930 [~~\$900~~] limits for modified reporting after the 30th day before the election and on or before the 10th day before the election must file a report under §20.325(f) of this title (relating to Pre-Election Reports), in addition to any required special pre-election reports.

§20.331. Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures.

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) the full name of the specific-purpose committee;
- (2) the address of the specific-purpose committee;
- (3) the full name of the specific-purpose committee's campaign treasurer;
- (4) the residence or business street address of the specific-purpose committee's campaign treasurer;
- (5) the committee campaign treasurer's telephone number;
- (6) the identity and date of the election for which the report is filed, if applicable;
- (7) for each candidate supported or opposed by the specific-purpose committee:
 - (A) the full name of the candidate;
 - (B) the office sought by the candidate; and
 - (C) an indication of whether the committee supports or opposes the candidate;
- (8) for each officeholder assisted by the specific-purpose committee:
 - (A) the full name of the officeholder;
 - (B) the office held by the officeholder; and
 - (C) an indication of whether the committee supports or opposes the officeholder;
- (9) for each measure supported or opposed by the specific-purpose committee:
 - (A) a description of the measure; and

(B) an indication of whether the committee supports or opposes the measure;

(10) for each political expenditure by the committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the specific-purpose committee during the reporting period:

- (A) the amount returned;
- (B) the full name of the person to whom the expenditure was originally made;
- (C) the address of the person to whom the expenditure was originally made; and
- (D) the date the expenditure was returned to the specific-purpose committee;

(11) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

- (A) the full name of the business to which the expenditure was made;
- (B) the address of the business to which the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(12) if the specific-purpose committee supports or opposes measures exclusively, for each contribution accepted from a labor organization or corporation, as defined by §20.1 of this title (relating to Definitions):

- (A) the date each contribution was accepted;
- (B) the full name of the corporation or labor organization making the contribution;
- (C) the address of the corporation or labor organization making the contribution;
- (D) the amount of the contribution; and
- (E) a description of any in-kind contribution;

(13) for each person from whom the specific-purpose committee accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than \$90 in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than \$90 in value:

- (A) the full name of the person;
- (B) the address of the person;
- (C) the total amount of contributions;
- (D) the date each contribution was accepted; and
- (E) a description of any in-kind contribution;

(14) for each person from whom the specific-purpose committee accepted a pledge or pledges to provide more than \$90 in money or to provide goods or services worth more than \$90:

- (A) the full name of the person making a pledge;
- (B) the address of the person making a pledge;

- (C) the amount of the pledge;
- (D) the date each pledge was accepted; and
- (E) a description of any goods or services pledged;

(15) the total of all pledges accepted during the period for \$90 and less from a person, except those reported under paragraph (14) of this section;

(16) for each person making a loan or loans to the specific-purpose committee for campaign or officeholder purposes if the total amount loaned by the person during the period is more than \$90:

- (A) the full name of the person or financial institution making the loan;
- (B) the address of the person or financial institution making the loan;
- (C) the amount of the loan;
- (D) the date of the loan;
- (E) the interest rate;
- (F) the maturity date;
- (G) the collateral for the loan, if any; and
- (H) if the loan has guarantors:
 - (i) the full name of each guarantor;
 - (ii) the address of each guarantor;
 - (iii) the principal occupation of each guarantor;
 - (iv) the name of the employer of each guarantor; and
 - (v) the amount guaranteed by each guarantor;

(17) the total amount of loans accepted during the period for \$90 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (16) of this section;

(18) for political expenditures made during the reporting period that total more than \$190 [~~\$180~~] to a single payee:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(19) for each direct campaign expenditure benefiting a candidate or officeholder, except for a direct campaign expenditure made by a committee supporting only one candidate or officeholder:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(20) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (11) of this section:

- (A) the date of each expenditure;
- (B) the full name of the person to whom the expenditure was made;

(C) the address of the person to whom the expenditure was made;

- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(21) for each political contribution accepted from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(22) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(23) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(24) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(25) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~];

(26) the full name and address of each person from whom an amount described by paragraph (22), (23), (24), or (25) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(27) the following total amounts:

- (A) the total principal amount of all outstanding loans as of the last day of the reporting period;
- (B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$90 and less;
- (C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);
- (D) the total amount or an itemized listing of the political expenditures of \$190 [~~\$180~~] and less; and
- (E) the total amount of all political expenditures; and

(28) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.333. *Special Pre-Election Report by Certain Specific-Purpose Committees.*

(a) As provided by subsection (b) of this section, certain specific-purpose committees must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the day before an election. Reports under this section are known as "special pre-election" reports.

(b) A campaign treasurer for a specific-purpose committee for supporting or opposing a candidate for an office specified by §252.005(1), Election Code, that, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,860 [~~\$1,790~~] must file special pre-election reports.

(c) Except as provided in subsection (e) of this section, the campaign treasurer of a specific-purpose committee must file a report so that the report is received by the commission no later than the first

business day after the committee accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(d) If, during the reporting period for special pre-election contributions, a committee receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a special pre-election report during the period, the campaign treasurer for the committee must file an additional special pre-election report for each such contribution. Except as provided in subsection (e) of this section, each such special pre-election report must be filed so that it is received by the commission no later than the first business day after the committee accepts the contribution.

(e) The campaign treasurer of a specific-purpose committee must file a special pre-election report for each person whose contribution or contributions made during the period for special pre-election reports exceed the threshold for special pre-election reports.

(f) A campaign treasurer of a specific-purpose committee must also report contributions reported on a special pre-election report on the next semiannual, pre-election, or runoff report filed, as applicable.

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 F. REPORTING REQUIREMENT FOR A GENERAL PURPOSE COMMITTEE

1 TAC §§20.401, 20.405, 20.433 - 20.435

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.401. Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee.

(a) A general-purpose committee may not accept political contributions exceeding §910 [~~§870~~] and may not make or authorize political expenditures exceeding §910 [~~§870~~] without filing a campaign treasurer appointment with the commission.

(b) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a general-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding §910 [~~§870~~] to support or oppose a candidate in a primary or general election for the following:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the State Board of Education;

(4) a multi-county district office; or

(5) a judicial district office filled by voters of only one county.

§20.405. Campaign Treasurer Appointment for a General-Purpose Committee.

(a) A general-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.401(a) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

(b) After a general-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded §910 [~~§870~~] in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the general-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.433. Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures.

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) the full name of the general-purpose committee;
- (2) the address of the general-purpose committee;
- (3) the full name of the general-purpose committee's campaign treasurer;
- (4) the residence or business street address of the general-purpose committee's campaign treasurer;
- (5) the committee campaign treasurer's telephone number;
- (6) the identity and date of the election for which the report is filed, if applicable;
- (7) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by the general-purpose committee and an indication of whether the general-purpose committee supports or opposes each listed candidate, measure, or classification by party of candidates;
- (8) the full name of each identified officeholder or classification by party of officeholders assisted by the general-purpose committee;
- (9) if the general-purpose committee supports or opposes measures exclusively, for each contribution accepted from a corporation as defined by §20.1 of this title (relating to Definitions):
 - (A) the date each contribution was accepted;
 - (B) the full name of the corporation or labor organization making the contribution;
 - (C) the address of the corporation or labor organization making the contribution;
 - (D) the amount of the contribution; and
 - (E) a description of any in-kind contribution;
- (10) for each political expenditure by the general-purpose committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the general-purpose committee during the reporting period:

- (A) the amount returned;
- (B) the full name of the person to whom the expenditure was originally made;
- (C) the address of the person to whom the expenditure was originally made; and
- (D) the date the expenditure was returned to the general-purpose committee;

(11) for each person from whom the general-purpose committee accepted a political contribution other than a pledge or a loan of more than \$90 in value, or political contributions other than pledges or loans that total more than \$90 in value (or more than \$20 for a general-purpose committee reporting monthly):

- (A) the date each contribution was accepted;
- (B) the full name of the person making the contribution;
- (C) the address of the person making the contribution;
- (D) the principal occupation of the person making the contribution;
- (E) the amount of the contribution; and
- (F) a description of any in-kind contribution;

(12) for each person from whom the general-purpose committee accepted a pledge or pledges to provide more than \$90 in money or to provide goods or services worth more than \$90 (more than \$20 for a general-purpose committee reporting monthly):

- (A) the full name of the person making the pledge;
- (B) the address of the person making the pledge;
- (C) the principal occupation of the person making the pledge;
- (D) the amount of each pledge;
- (E) the date each pledge was accepted; and
- (F) a description of any goods or services pledged;

(13) the total of all pledges accepted during the period for \$90 and less from a person, except for those reported under paragraph (12) of this section;

(14) for each person making a loan or loans to the general-purpose committee for campaign purposes if the total amount loaned by the person during the period is more than \$90 (more than \$20 for a general-purpose committee reporting monthly):

- (A) the full name of the person or financial institution making the loan;
- (B) the address of the person or financial institution making the loan;
- (C) the amount of the loan;
- (D) the date of the loan;
- (E) the interest rate;
- (F) the maturity date;
- (G) the collateral for the loan, if any; and
- (H) if the loan has guarantors:
 - (i) the full name of each guarantor;
 - (ii) the address of each guarantor;

- (iii) the principal occupation of each guarantor;
- (iv) the name of the employer of each guarantor; and
- (v) the amount guaranteed by each guarantor;

(15) the total amount of loans accepted during the period for \$90 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for those reported under paragraph (14) of this section;

(16) for political expenditures made during the reporting period that total more than \$190 [~~\$180~~] (more than \$20 for a general-purpose committee reporting monthly) to a single payee:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure;
- (E) the amount of the expenditure; and
- (F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(17) for each non-political expenditure made from political contributions:

- (A) the date of each expenditure;
- (B) the full name of the person to whom the expenditure was made;
- (C) the address of the person to whom the expenditure was made;
- (D) the purpose of the expenditure;
- (E) the amount of the expenditure; and
- (F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(18) for each candidate or officeholder who benefits from a direct campaign expenditure made by the committee:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(19) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(20) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130;~~]

(21) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130;~~]

(22) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130;~~]

(23) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$120; [~~\$130~~]

(24) the full name and address of each person from whom an amount described by paragraph (20), (21), (22), or (23) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(25) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$90 and less (\$20 and less for a general-purpose committee reporting monthly);

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$190 [~~\$180~~] and less (\$20 and less for a general-purpose committee reporting monthly); and

(E) the total amount of all political expenditures; and

(26) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.434. Alternate Reporting Requirements for General-Purpose Committees.

(a) This section and Election Code §254.1541 apply only to a general-purpose committee with less than \$27,000 [~~\$25,860~~] in one or more accounts maintained by the committee in which political contributions are deposited, as of the last day of the preceding reporting period for which the committee was required to file a report.

(b) The alternative reporting requirement in Election Code §254.1541 applies only to contributions.

(c) A report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.154 apply shall include the information required by §20.433 of this title (Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions of \$190 [~~\$180~~] instead of the threshold reporting amount of \$90 set out in §20.433(a)(11) and (a)(20)(B) of this title.

(d) A monthly report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.154 apply shall include the information required by §20.433 of this title (Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions of \$40 instead of the threshold reporting amount of \$20 set out in §20.433(a)(11) and (a)(20)(B) of this title.

§20.435. Special Pre-Election Reports by Certain General-Purpose Committees.

(a) In addition to other reports required by this chapter, a general-purpose committee must file a special pre-election report if the committee is involved in an election and if it:

(1) makes direct campaign expenditures supporting or opposing a single candidate that in the aggregate exceed \$1,860 [~~\$1,790~~]

or a group of candidates that in the aggregate exceed \$27,950 [~~\$26,780~~] during the reporting period for special pre-election reports; or

(2) accepts political contributions from a person that in the aggregate exceed \$6,370 [~~\$6,090~~] during the reporting period for special pre-election reports.

(b) The period for special pre-election reports begins on the ninth day before election day and ends at noon on the day before election day.

(c) Except as provided by subsection (d) of this section, a report under this section must be received by the commission no later than the first business day after the contribution is accepted or the expenditure is made.

(d) A special pre-election report that is exempt from electronic filing under §254.036(c), Election Code, must be received by the commission no later than 5 p.m. of the first business day after the contribution is accepted or the expenditure is made.

(e) Expenditures and contributions reported under this section must be reported again in the next applicable sworn report of contributions and expenditures.

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SUBCHAPTER I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY EXECUTIVE COMMITTEE

1 TAC §20.553, §20.555

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.553. Campaign Treasurer Appointment Not Required for County Executive Committee Accepting Contributions or Making Expenditures under Certain Amount.

(a) A county executive committee accepting political contributions or making political expenditures totaling \$33,750 [~~\$32,320~~] or less in a calendar year is not required to:

(1) appoint a campaign treasurer before accepting political contributions or making political expenditures; or

(2) file the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee).

(b) A county executive committee described in subsection (a) of this section is required to comply with §20.551 of this title (relating to Obligation To Maintain Records).

§20.555. County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount.

(a) A county executive committee described by subsection (b) of this section is subject to the requirements of Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee), except where those rules conflict with this subchapter. In the case of conflict, this subchapter prevails over Subchapter F of this chapter.

(b) A county executive committee that accepts political contributions or that makes political expenditures that, in the aggregate, exceed §33,750 [~~§32,320~~] in a calendar year shall file:

(1) a campaign treasurer appointment with the commission no later than the 15th day after the date that amount is exceeded; and

(2) the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee). The first report filed must include all political contributions accepted and all political expenditures made before the county executive committee filed its campaign treasurer appointment.

(c) Contributions accepted from corporations and labor organizations under §253.104 of the Election Code and reported under Subchapter H of this chapter (relating to Accepting and Reporting Contributions from Corporations and Labor Organizations) do not count against the §33,750 [~~§32,320~~] thresholds described in subsection (b) of this section.

(d) A county executive committee that filed a campaign treasurer appointment may file a final report, which will notify the commission that the county executive committee does not intend to file future reports unless it exceeds one of the §33,750 [~~§32,320~~] thresholds. The final report may be filed:

(1) beginning on January 1 and by the January 15 filing deadline if the committee has exceeded one of the §33,750 [~~§32,320~~] thresholds in the previous calendar year; or

(2) at any time if the committee has not exceeded one of the §33,750 [~~§32,320~~] thresholds in the calendar year.

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CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §§22.1, 22.6, 22.7

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 22. Specifically, the Commission proposes amendments to §22.1, regarding Certain Campaign Treasurer Appointments Required

before Political Activity Begins, §22.6, regarding Reporting Direct Campaign Expenditures, and §22.7, regarding Contribution from Out-of-State Committee.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2021, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which have been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government

Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§22.1. Certain Campaign Treasurer Appointments Required before Political Activity Begins.

(a) An individual must file a campaign treasurer appointment with the proper authority before accepting a campaign contribution or making or authorizing a campaign expenditure.

(1) An officeholder may accept an officeholder contribution and make or authorize an officeholder expenditure without a campaign treasurer appointment on file.

(2) An officeholder who does not have a campaign treasurer appointment on file may not accept a campaign contribution or make or authorize a campaign expenditure.

(b) A political committee may not accept political contributions exceeding \$910 [~~\$870~~] and may not make or authorize political expenditures exceeding \$910 [~~\$870~~] without filing a campaign treasurer appointment with the appropriate filing authority.

(c) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a political committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$910 [~~\$870~~] to support or oppose a candidate in a primary or general election for the following:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the State Board of Education;
- (4) a multi-county district office; or
- (5) a judicial district office filled by voters of only one county.

(d) This section does not apply to the county executive committee of a political party except as provided in Chapter 20, Subchapter I of this title (relating to Rules Applicable to a Political Party's County Executive Committee).

§22.6. Reporting Direct Campaign Expenditures.

Section 254.261 of the Election Code applies to a person who, not acting in concert with another person, makes one or more direct campaign expenditures that exceed \$140 [~~\$130~~] in an election from the person's own property.

§22.7. Contribution from Out-of-State Committee.

(a) For each reporting period during which a candidate, officeholder, or political committee accepts a contribution or contributions from an out-of-state political committee totaling more than \$930 [~~\$900~~], the candidate, officeholder, or political committee must comply with subsections (b) and (c) of this section.

(b) The candidate, officeholder, or political committee covered by subsection (a) of this section must first obtain from the out-of-state committee one of the following documents before accepting the contribution that causes the total received from the out-of-state committee to exceed \$930 [~~\$900~~] during the reporting period:

(1) a written statement, certified by an officer of the out-of-state political committee, listing the full name and address of each person who contributed more than \$190 [~~\$180~~] to the out-of-state political committee during the 12 months immediately preceding the date of the contribution; or

(2) a copy of the out-of-state political committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee.

(c) The document obtained pursuant to subsection (b) of this section shall be included as part of the report that covers the reporting period in which the candidate, officeholder, or political committee accepted the contribution that caused the total accepted from the out-of-state committee to exceed \$930 [~~\$900~~].

(d) A candidate, officeholder, or political committee that:

(1) receives contributions covered by subsection (a) of this section from the same out-of-state committee in successive reporting periods; and

(2) complies with subsection (b)(2) of this section before accepting the first contribution triggering subsection (a) of this section, may comply with subsection (c) of this section in successive reporting periods by submitting a copy of the certified document obtained before accepting the first contribution triggering subsection (a) of this section, rather than by obtaining and submitting an original certified document for each reporting period, provided the document has not been amended since the last submission.

(e) A candidate, officeholder, or political committee that accepts a contribution or contributions totaling \$930 [~~\$900~~] or less from an out-of-state political committee shall include as part of the report covering the reporting period in which the contribution or contributions are accepted either:

(1) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee; or

(2) the following information:

(A) the full name of the committee, and, if the name is an acronym, the words the acronym represents;

(B) the address of the committee;

(C) the telephone number of the committee;

(D) the name of the person appointing the campaign treasurer; and

(E) the following information for the individual appointed campaign treasurer and assistant campaign treasurer:

(i) the individual's full name;

(ii) the individual's residence or business street address; and

(iii) the individual's telephone number.

(f) This section does not apply to a contribution from an out-of-state political committee if the committee filed a campaign treasurer appointment with the commission before making the contribution.

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 July 20, 2020.

TRD-202002974

J.R. Johnson

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS

SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.41, §34.43

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 34. Specifically, the Commission proposes amendments to §34.41, regarding Expenditure Threshold, and §34.43, regarding Compensation and Reimbursement Threshold.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2021, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which have been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the

proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amendments are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 305 of the Election Code; Texas Government Code §305.003, which authorizes the Commission to determine by rule the amount of expenditures made or compensation received over which a person is required to register as a lobbyist; and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Chapter 305 of the Government Code.

§34.41. Expenditure Threshold.

(a) A person must register under Government Code, §305.003(a)(1), if the person makes total expenditures of more than \$810 [~~\$780~~] in a calendar quarter, not including expenditures for the person's own travel, food, lodging, or membership dues, on activities described in Government Code, §305.006(b), to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

(b) An expenditure made by a member of the judicial, legislative, or executive branch of state government or an officer or employee of a political subdivision of the state acting in his or her official capacity is not included for purposes of determining whether a person is required to register under Government Code, §305.003(a)(1).

(c) An expenditure made in connection with an event to promote the interests of a designated geographic area or political subdivision is not included for purposes of determining whether a person has crossed the registration threshold in Government Code, §305.003(a)(1), if the expenditure is made by a group that exists for the limited purpose of sponsoring the event or by a person acting on behalf of such a group.

§34.43. Compensation and Reimbursement Threshold.

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than \$1,620 [~~\$1,560~~] in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person is not required to register if the person spends not more than 40 hours for which the person is compensated or reimbursed during a calendar quarter engaging in lobby activity, including preparatory activity as described by §34.3 of this title.

(c) For purposes of Government Code, §305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other activities.

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 July 20, 2020.



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.21, Action by Department if Outstanding Balances Exist. The purpose of the proposed repeal is to clarify the applicability of this rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program but relates to changes to an existing activity, previous participation reviews.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed repeal will not expand, limit, or repeal an existing regulation.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 31, 2020, to August 31, 2020, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, August 31, 2020.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein, the proposed amended sections affect no other code, article, or statute.

§1.21. Action by Department if Outstanding Balances Exist.

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 July 20, 2020.

TRD-202002964
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 30, 2020
For further information, please call: (512) 475-1762



10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.21, Action by Department if Outstanding Balances Exist. The purpose of the proposed new section is to make minor clarifications to the handling of requests to the Department when outstanding balances are due. The proposed new rule clarifies that this rule is applicable to cases of applications for awards, and makes other minor modifications.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed new section would be in effect:

1. The proposed new section does not create or eliminate a government program but relates to changes to an existing activity, previous participation reviews.
2. The proposed new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed new section does not require additional future legislative appropriations.
4. The proposed new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed new section is not creating a new regulation, except that they are replaced sections being repealed simultaneously to provide for revisions.
6. The proposed new section will not expand, limit, or repeal an existing regulation.
7. The proposed new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed new section as to their possible effects on local economies and has determined that for the first five years the proposed new section would be in effect there would be no economic effect on local employment;

therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the new section would be an updated rule. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new section is in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 31, 2020, to August 31, 2020, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, August 31, 2020.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.21. Action by Department if Outstanding Balances Exist.

(a) Purpose. The purpose of this section is to inform Persons or entities requesting awards of new funds or resources, Form(s) 8609, application amendments, LURA amendments, new Contracts (with the exception of a Household Commitment Contract), Contract amendments, or loan modifications that, with the exceptions noted by this rule, if fees or loan payments (principal or interest) are past due, or Disallowed Costs have not been repaid, to the Department, the request may be denied, delayed, or the Subrecipient/Administrator/Developer/Owner's Contract(s) terminated.

(b) Definitions.

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state law.

(2) Disallowed Costs: Expenses claimed by a Subrecipient/Administrator/Developer/Owner, paid by the Department, and subsequently determined by the Department to be ineligible and subject to repayment.

(c) Except in the case of interim construction loans, if Disallowed Costs, fees, or loan payments are past due the Department will not: issue Form(s) 8609; amend applications or LURAs; or modify loan documents.

(d) Except in the case of Contracts for CSBG non-discretionary funds, the Department will not make awards of new funds or resources, enter into new Contracts, or amend Contracts when Disallowed Costs, fees, or loan payments remain unpaid, unless the entity has entered into, and is complying with, an agreed-upon repayment plan that is approved by the Department's Executive Director or Enforcement Committee.

(e) Once the Department notifies a Person or entity that they are responsible for the payment of Disallowed Costs, required fee or

payment that is past due, if no corrective action is taken within seven days of notification, the Executive Director may deny the requested action for failure to comply with this rule.

(f) Exception for a Work Out Development. If fees (not including application or amendment fees) or payments affiliated with a work out Development are past due, then the past due amounts affiliated with a work out Development may be excepted from this rule, so long as the work out is actively underway by Department staff. In which case, in the Department's sole discretion, LURA or any other kinds of amendments may be considered for the subject Development or Contract.

(g) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Person or entity applies for funding or an award from the Department, any fees, Disallowed Costs, or payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents and any past due fees (not just those related to the subject of the request) will be reported to the EARAC.

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 July 20, 2020.

TRD-202002966

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 475-1762



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §83.72

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 83, §83.72, Responsibilities of Beauty Culture Schools, regarding the Cosmetology Program. These proposed changes are referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 83, implement Texas Occupations Code, Chapter 1602, Cosmetologists, and Chapter 1603, Regulation of Barbering and Cosmetology.

On February 18, 2020, the Texas Commission of Licensing and Regulation (Commission) adopted amendments to Chapter 83 to implement necessary changes as required by House Bill (HB) 2847, 86th Legislature, Regular Session (2019), and recommendations from the Cosmetology Advisory Board's workgroups to reduce regulatory burdens and provide more clarity to the industry by using updated and standardized terminology. Section 83.72 was one of the rules amended by that rulemaking, and the section was amended effective March 15, 2020.

Due to a clerical error, the amended text of §83.72 incorporated into the Texas Administrative Code is not the text that was published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 42) and adopted by the Commission on February 18, 2020. As a result, incorrect requirements are present in the currently published text of §83.72. As a short-term solution to protect the public health, safety, and welfare, the Commission adopted an emergency rulemaking on June 30, 2020, to correct the errors present in the text of §83.72. This emergency rule was published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4595).

The proposed rule amends §83.72 in a manner identical to the June 30, 2020, emergency rulemaking. The amendments correct errors in the text of §83.72(w)(9) - (10), reverting the requirements for Beauty Culture Schools offering the esthetician and manicurist curriculum standards to those in place prior to the March 15, 2020, changes to the section.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §83.72 by reversing changes to the equipment requirements for Beauty Culture Schools offering the esthetician curriculum standards (§83.72(w)(9)) and the manicurist curriculum standards (§83.72(w)(10)).

For the esthetician curriculum standards, subsections §83.72(w)(9)(B) - (J) are amended to reflect the equipment requirements in place prior to the March 15, 2020, changes to the section. These changes remove unnecessary equipment related to other cosmetology curricula and include appropriate equipment for instruction of the esthetician curriculum standards.

For the manicurist curriculum standards, subsections §83.72(w)(10)(A) - (J) are amended to reflect the equipment requirements in place prior to the March 15, 2020, changes to the section. These changes remove unnecessary equipment related to other cosmetology curricula and include appropriate equipment for instruction of the manicurist curriculum standards.

The amendments in the proposed rule represent a revision to the equipment requirements previously in place for the version of §83.72 effective January 15, 2018 (43 TexReg 81), until March 15, 2020. In the pre-March 15, 2020, version of the rule, the subsections were numbered §83.72(w)(10) - (11).

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments. The proposed rule will not impact TDLR's costs or fees paid to the agency. Additionally, local governments are not responsible for enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rule will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022. The proposed rule will not affect the number of licensed cosmetologists or the number of cosmetology schools.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be ensuring public safety and welfare by returning the school

equipment requirements to those that have been determined to allow esthetician and manicurist students to learn to safely perform those services. Additionally, correcting the two subsections will prevent confusion for schools and unnecessary expenditures on the wrong equipment.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. The clerical errors present in the version of §83.72 effective March 15, 2020, were not publicized by the Department, and the Commission adopted an emergency rule to remedy the errors on June 30, 2020. It is doubtful any schools which offer esthetician or manicure education made any changes to the equipment they held on hand following the March 15, 2020, rule amendments. Since schools likely did not discard the equipment they previously owned for the esthetician and manicurist curriculum standards, no new costs will be imposed.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule does expand, limit, or repeal an existing regulation. The proposed rule change amends current Subsections §83.72(w)(9) - (10), reverting the text to the previous subsections the current ones replaced.

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the proposed rule.

§83.72. *Responsibilities of Beauty Culture Schools.*

(a) - (v) (No change.)

(w) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct students enrolled at the school:

(1) - (8) (No change.)

(9) If offering the esthetician curriculum standards, the following equipment must be available in adequate number for student use:

(A) facial chair or bed;

(B) lighted magnifying glass [~~heat processor, hand-held hair dryer, heat cap, or therapeutic light~~];

(C) woods lamp [~~cold wave rods~~];

(D) dry sanitizer [~~thermal iron (electric or non-electric)~~];

(E) steamer machine [~~styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic)~~];

(F) brush machine for cleaning [~~mannequin with sufficient hair, with table or attached to styling station~~];

(G) vacuum machine [~~professional hand clippers~~];

(H) high frequency machine for disinfection, product penetration, stimulation [~~professional hand held dryer~~];

(I) galvanic machine for eliminating encrustations, product penetration [~~manicure table and stool~~];

(J) paraffin bath and paraffin wax [~~facial chair or bed~~];

(K) mannequin head; and

(L) wet disinfectant soaking containers, large enough to fully immerse tools and implements.

(10) If offering the manicure curriculum standards, the following equipment must be available in adequate number for student use:

(A) an autoclave, dry-heat sterilizer or ultra-violet sanitizer [~~facial chair~~];

(B) complete manicure table with light [~~lighted magnifying glass~~];

(C) client chair [~~woods lamp~~];

(D) student stool or chair [~~dry sanitizer~~];

(E) whirlpool foot spa or foot basin [~~steamer machine~~];

(F) electric nail file [~~brush machine for cleaning~~];

(G) UV light curing system [~~vacuum machine~~];

(H) paraffin bath and paraffin wax [~~high frequency machine for disinfection, product penetration, stimulation~~];

(I) air brush system; and [~~galvanic machine for eliminating encrustations; product penetration;~~]

(J) wet disinfectant soaking containers. [~~paraffin bath and paraffin wax;~~]

(11) - (12) (No change.)

(x) (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 July 20, 2020.

TRD-202002954

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 463-3671



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER B. SPECIAL PURPOSE SCHOOL DISTRICTS

19 TAC §61.101

The State Board of Education (SBOE) proposes new §61.101, concerning special purpose school districts. The proposed new section would identify provisions of the Texas Education Code

(TEC) that are not applicable to the special-purpose school districts operated by Texas Tech University (TTU) and The University of Texas at Austin (UT Austin).

BACKGROUND INFORMATION AND JUSTIFICATION: The SBOE approved the TTU Independent Study by Correspondence High School Program in September 1993. The SBOE approved the UT High School program in November 1998. For both special purpose districts, the SBOE established the following conditions: no state funds shall be used to support the program; transcripts awarded to students enrolled in the program shall be consistent with the academic achievement record required by the Texas Administrative Code (TAC); courses offered shall be consistent with courses required by the TAC; requirements for a high school diploma shall be consistent with the state graduation requirements and with exit-level assessment requirements in the TAC; state required testing will be implemented in accordance with existing rules and schedules; and other SBOE rules for curriculum shall be applicable as appropriate.

The 86th Texas Legislature, 2019, passed House Bill 3, which entitled a special-purpose school district operated by TTU or UT Austin to funding under TEC, Chapter 48. If TTU or UT Austin receives state funding for a school year, the special-purpose district may not charge tuition or fees to students enrolled in the district who are residents of Texas for that school year, other than fees authorized under the TEC.

The proposed new section would specify duties or limitations to be imposed on the special-purpose school districts if they opt to receive state funding.

The SBOE approved the proposed new section for first reading and filing authorization at its July 2, 2020 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation. The new rule would identify provisions of the TEC that are not applicable to the special-purpose school districts operated by TTU and UT Austin.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarifying which provisions of the TEC are not applicable to the special-purpose school districts operated by TTU and UT Austin. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact. The two special purpose school districts would be required to report student attendance, provide information on school board training, and provide recommendations regarding applicability of the TEC to the SBOE each odd-numbered year. The special purpose districts would also be required to report student-level information through the Public Education Information Management System for purposes of funding.

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 31, 2020, and ends September 4, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2020 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 31, 2020.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §11.351, which permits the State Board of Education to establish a special-purpose school district for the education of students in special situations whose educational needs are not adequately met by regular school districts. The board is also permitted to impose duties or limitations on the school district as necessary for the special purpose of the district.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §11.351.

§61.101. Applicability of State Law for Special Purpose School Districts.

(a) This section applies only to the special purpose school districts operated by the University of Texas at Austin and Texas Tech University.

(b) The special purpose school districts operated by the University of Texas at Austin and Texas Tech University are public schools of this state fulfilling the mission of the Texas public education system to ensure that Texas students receive a quality education that enables

them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation.

(c) Each special purpose school district shall be governed by the board of regents of the parent university, which has the authority and responsibilities of a school district board of trustees with respect to the operation of the special purpose school district but has no authority to levy a tax. The board of regents may delegate authority and responsibilities.

(d) Each special purpose school district shall have an advisory board consisting of at least five members that, along with the superintendent, reports to the board of regents regarding the operation of the district. The president of the university may designate a person to report on the management, operations, and accountability of the special purpose school district to the board of regents. The following requirements apply to each special purpose school district.

(1) The advisory board shall hold public meetings that comply with appropriate notice requirements for governmental bodies.

(2) The president of the university shall appoint the superintendent of the special purpose school district.

(3) The university shall submit nominees for approval by the State Board of Education (SBOE) to serve as special purpose school district advisory board members. The superintendent may not participate in the nomination process for the advisory board.

(4) The superintendent and advisory board shall ensure information required to be made available to the public is made available on the special purpose school district's website.

(5) The university shall develop an advisory board training program that provides the relevant board training required under Texas Education Code (TEC), §11.159, and shall submit to the SBOE the training requirements by September 1 of each odd-numbered year.

(e) Students who are eligible to enroll in a Texas independent or common school district are eligible to enroll in a special purpose school district, and each special purpose school district:

(1) shall establish an initial enrollment window for each academic semester that uses a lottery to fill open spots not filled by previously enrolled students. After the initial enrollment window closes, enrollment may be based on a first come first served basis;

(2) shall develop an outreach program targeted at underserved student populations;

(3) may admit students at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma in accordance with TEC, §25.001. For purposes of TEC, §25.001(b-2), the term "classroom setting" does not include a virtual classroom that has no physical proximity; and

(4) is neither required nor prohibited from providing a student with home computer equipment or internet access.

(f) Except as provided elsewhere in this section, each special purpose school district operates as a public school of Texas, and the laws applicable to Texas public schools, per TEC, §11.352(c), apply, including:

(1) providing for equal education opportunity, in accordance with the TEC and constitutions of Texas and the United States;

(2) charging fees, holding funding in trust for the education of students, and spending funding to achieve the educational purposes listed in this section;

(3) complying with student records retention, transmission, and other related requirements;

(4) having access to other school resources such as regional education service centers under TEC, Chapter 8 and §11.003; commissioner of education waiver authority under TEC, §7.056; school immunity under TEC, Chapter 22, Subchapter B; and relevant grant programs;

(5) certification requirements under TEC, §§21.003, 21.055, and 21.057, and continuing education requirements under TEC, §21.054, with employment practices to include provisions substantially similar to TEC, §21.0031 and §21.058;

(6) complying with the health, safety, and welfare provisions such as reporting of misconduct under TEC, §§21.006, 21.0061, 21.009, 21.057, 21.058, 21.0581, and 21.062, and background checks under TEC, Chapter 22, Subchapters C and C-1;

(7) parental and student rights such as those provided for in TEC, Chapter 26.

(A) The special purpose school district shall establish a grievance process for complaints.

(B) If the special purpose school district determines that releasing a copy of an assessment would jeopardize the security of the assessment because it has not been published and is not publicly available, in place of releasing a copy of the assessment, the special purpose school district shall provide information regarding the standards and concepts for which the student failed to demonstrate proficiency or, using appropriate security protocols, make the assessment available for personal review by the student and parent without releasing a copy;

(8) creditable years of service;

(9) curriculum and graduation requirements under TEC, Chapter 28;

(10) the instructional materials allotment and the provisions of TEC, Chapter 31; and

(11) accreditation, assessment of academic skills, academic accountability, and interventions and sanctions under TEC, §11.001 and Chapters 39 and 39A.

(g) Each special purpose school district shall develop a policy regarding when a student is deemed absent and has excessive absences under its program.

(1) If the student has excessive absences under the policy, the special purpose school district shall notify both the student and the school district the student would otherwise be entitled to attend that the student has been disenrolled from the special purpose school district.

(2) By September 1 of each odd-numbered school year, the special purpose school district shall submit its absence policy to the SBOE, including any modifications made since the previous submission.

(h) If a special purpose school district seeks a waiver under commissioner authority for more than three consecutive years, the special purpose school district shall submit the issue to the SBOE for consideration as a possible permanent exemption.

(i) As a special purpose school district is designed to provide education statewide through digital learning methodologies, the following special requirements and modifications are in effect.

(1) TEC, Chapter 12A, does not apply.

(2) TEC, Chapter 22, Subchapter A, does not apply.

(3) The superintendent shall make personnel decisions for the special purpose school district.

(A) Employee grievances shall be covered by the parent university's human resources practices.

(B) The parent university's human resources requirements and practices shall apply to employees, unless otherwise indicated by law or rule.

(4) The special purpose school district shall operate in the time and accounting manner necessary to comply with the funding model established by the commissioner for access to Foundation School Program (FSP) funds.

(5) The special purpose school district shall adopt a student code of conduct that aligns with the provisions of TEC, Chapter 37, but is not required to include the use of disciplinary alternative education programs or juvenile justice alternative education programs.

(6) The special purpose school district shall annually submit to the SBOE a report on disciplinary actions made to the district and a report on complaints made to the special purpose school district.

(7) TEC, §§11.1542, 11.1543, and 11.155, do not apply.

(8) The special purpose school district is not required to have the membership compositions for committees under TEC, §§11.251, 11.252, 11.253, or 11.255, but must develop plans and policies that comply with those provisions.

(9) Educator contract requirements under TEC, Chapter 21, Subchapters C, D, E, F, and G; appraisal system requirements under TEC, Chapter 21, Subchapter H; duties and benefits requirements under TEC, Chapter 21, Subchapter I; and staff development requirements under TEC, Chapter 21, Subchapter J, do not apply, and the special purpose school district shall develop an appraisal system that contains the items in TEC, §21.351(a).

(10) TEC, §§25.08111 and 25.111-25.114, do not apply.

(11) The requirements of TEC, §28.004, to have a school health advisory council do not apply, but the special purpose school district shall:

(A) comply with the provisions of TEC, §28.004, with regard to the parameters of health education and curriculum materials; posting, notice, and grievance provisions; and consideration of related issues; and

(B) require that the advisory board solicit community and parental input and develop recommendations regarding the subject matter of TEC, §28.004(c)(1), (2)(A) and (D)-(H), and (3)-(6).

(12) Financial accountability and fiscal management under TEC, Chapters 39 and 44, shall apply as if the special purpose school district were a university charter school, and the special purpose school district's public funds must be maintained in a manner that allows auditing of the public funds separate from other funds.

(j) The provisions of this section apply to each special purpose school district's operation for educating students eligible for enrollment in Texas public schools who enroll in the state-funded special purpose school district. This section does not apply to a tuition-based program operated in tandem with the state-funded program. However, the school operations that include Texas students are subject to subsection (l) of this section.

(1) A parent of a Texas student may voluntarily decide to enroll a student in the tuition-based program.

(2) The special purpose school district shall biannually report student attendance in its state-funded school and Texas student attendance in its tuition-supported school. Information shall be provided to ensure that student participation does not disadvantage any student group from access to the state-funded school.

(k) Each special purpose school district shall submit to the SBOE by September 1 of each odd-numbered year an updated list by section of the TEC, Title I and Title II, with recommendations regarding which sections of the code should apply or not apply to the operations of its schools. The submission must compare the recommendations to the list last provided to the SBOE.

(l) If the special purpose school district declines FSP payment, the special purpose school district is authorized to charge tuition and is subject to:

(1) accreditation, academic assessment, academic and financial accountability, and interventions under TEC, Chapters 39 and 39A; and

(2) reporting requirements imposed by the Texas Education Agency.

(m) The parent university of each special purpose school district shall submit nominations for and establish an advisory board as soon as practicable, and the provisions of this section that require the special purpose school district to develop a policy apply beginning with the 2021-2022 school year.

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 July 20, 2020.

TRD-202002958

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 475-1497



CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.1, §74.3

The State Board of Education (SBOE) proposes amendments to §74.1 and §74.3, concerning curriculum requirements. The proposed amendments would update the sections to align with recent legislation and with changes to the technology applications and career and technical education (CTE) Texas Essential Knowledge and Skills (TEKS).

BACKGROUND INFORMATION AND JUSTIFICATION: The 86th Texas Legislature, 2019, passed House Bill (HB) 963, which required the SBOE no later than March 1, 2020, to amend its rules in order to consolidate the TEKS for high school for technology application courses with the TEKS for CTE courses and to eliminate duplicative courses. A discussion item regarding proposed revisions to 19 TAC Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, and Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education, was presented to the Committee of the

Full Board at the November 2019 SBOE meeting, and at the January 2020 meeting the board approved the proposed revisions for first reading and filing authorization. At the April 2020 SBOE meeting, the board approved the proposed revisions for second reading and final adoption with an effective date of August 1, 2020. With the update to the courses for technology applications and the addition of a new CTE career cluster in energy, the SBOE will need to align the courses that districts and charter schools are required to make available to students.

Additionally, Senate Bill 11 and HB 18, 86th Texas Legislature, 2019, amended the required curriculum in Texas Education Code, §28.002, to add suicide prevention to the topics included in health education. The statutory changes also clarify that health education must include physical health, including the importance of proper nutrition and exercise, and mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making.

At the January 2020 meeting, a discussion item on proposed amendments to 19 TAC §74.1 and §74.3 was presented to the Committee on Instruction. The committee requested that Texas Education Agency (TEA) staff prepare proposed amendments for consideration by the SBOE and indicated that districts should no longer be required to offer specific technology applications courses since they will be included in CTE.

The proposed amendments would align the required secondary curriculum with the changes to the technology applications and CTE TEKS and reflect recent legislation.

The SBOE approved the proposed amendments for first reading and filing authorization at its July 2, 2020 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit existing regulations by revising the high school courses required to be offered by school districts and charter schools and eliminating certain technology applications courses from the list of high school courses required to be offered.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be updating and clarifying the rules regarding secondary courses required to be offered in order to avoid confusion for districts and schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 31, 2020, and ends September 4, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2020 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 31, 2020.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education to establish curriculum and graduation requirements; and TEC, §28.002(a), as amended by Senate Bill 11 and House Bill 18, 86th Texas Legislature, 2019, which identifies the subjects of the required curriculum.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.002(a).

§74.1. Essential Knowledge and Skills.

(a) A school district that offers kindergarten through Grade 12 must offer the following as a required curriculum:

(1) a foundation curriculum that includes:

- (A) English language arts;
- (B) mathematics;
- (C) science; and
- (D) social studies, consisting of Texas, United States and world history, government, geography, and economics, with emphasis on the free enterprise system and its benefits; and

(2) an enrichment curriculum that includes:

- (A) to the extent possible, languages other than English;

(B) health, with emphasis on: [the importance of proper nutrition and exercise;]

(i) physical health, including the importance of proper nutrition and exercise;

(ii) mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making; and

(iii) suicide prevention, including recognizing suicide-related risk factors and warning signs;

(C) physical education;

(D) fine arts;

(E) career and technical education;

(F) technology applications;

(G) religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature; and

(H) personal financial literacy.

(b) A school district must provide instruction in the essential knowledge and skills of the appropriate grade levels in the foundation and enrichment curriculum as specified in paragraphs(1)-(12)[(4)-(13)] of this subsection. A school district may add elements at its discretion but must not delete or omit instruction in the foundation and enrichment curriculum specified in subsection (a) of this section.

(1) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading)._[§]

(2) Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics)._[§]

(3) Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science)._[§]

(4) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies)._[§]

(5) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English)._[§]

(6) Chapter 115 of this title (relating to Texas Essential Knowledge and Skills for Health Education)._[§]

(7) Chapter 116 of this title (relating to Texas Essential Knowledge and Skills for Physical Education)._[§]

(8) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts)._[§]

~~[(9) Chapter 118 of this title (relating to Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits);]~~

~~[(9) [(40)] Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications)._[§]~~

~~[(10) [(11)] Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development)._[§]~~

~~[(11) [(12)] Chapter 128 of this title (relating to Texas Essential Knowledge and Skills for Spanish Language Arts and English as a Second Language)._[§] and]~~

~~[(12) [(13)] Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education).~~

§74.3. *Description of a Required Secondary Curriculum.*

- (a) (No change.)
- (b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the required curriculum as specified in §74.1 of this title. The district must ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A) English language arts--English I, II, III, and IV and at least one additional advanced English course;

(B) mathematics--Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications;

(C) science--Integrated Physics and Chemistry, Biology, Chemistry, Physics, and at least two additional science courses selected from Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, Advanced Animal Science, Advanced Biotechnology, Advanced Plant and Soil Science, Anatomy and Physiology, Engineering Design and Problem Solving, Food Science, Forensic Science, Medical Microbiology, Pathophysiology, Scientific Research and Design, and Principles of Engineering. The requirement to offer two additional courses may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students. Science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry;

(D) social studies--United States History Studies Since 1877, World History Studies, United States Government, World Geography Studies, Personal Financial Literacy, and Economics with Emphasis on the Free Enterprise System and Its Benefits;

(E) physical education--at least two courses selected from Foundations of Personal Fitness, Adventure/Outdoor Education, Aerobic Activities, or Team or Individual Sports;

(F) fine arts--courses selected from at least two of the four fine arts areas (art, music, theatre, and dance)--Art I, II, III, IV; Music I, II, III, IV; Theatre I, II, III, IV; or Dance I, II, III, IV;

(G) career and technical education--three or more career and technical education courses for four or more credits with at least one advanced course aligned with a specified number of Texas Education Agency-designated programs of study determined by enrollment as follows [coherent sequences of courses selected from at least three of the following sixteen career clusters]:

(i) one program of study for a district with fewer than 500 students enrolled;

(ii) two programs of study for a district with 501-1,000 students enrolled;

(iii) three programs of study for a district with 1,001-2,000 students enrolled;

(iv) four programs of study for a district with 1,001-5,000 students enrolled;

(v) five programs of study for a district with 5,001-10,000 students enrolled; and

(vi) six programs of study for a district with more than 10,000 students enrolled.

~~[(i) Agriculture, Food, and Natural Resources;]~~

~~[(ii) Architecture and Construction;]~~

~~[(iii) Arts, Audio/Video Technology, and Communications;]~~

~~[(iv) Business Management and Administration;]~~

~~[(v) Education and Training;]~~

~~[(vi) Finance;]~~

~~[(vii) Government and Public Administration;]~~

~~[(viii) Health Science;]~~

~~[(ix) Hospitality and Tourism;]~~

~~[(x) Human Services;]~~

~~[(xi) Information Technology;]~~

~~[(xii) Law, Public Safety, Corrections, and Security;]~~

~~[(xiii) Manufacturing;]~~

~~[(xiv) Marketing;]~~

~~[(xv) Science, Technology, Engineering, and Mathematics; and]~~

~~[(xvi) Transportation, Distribution, and Logistics;]~~

(H) languages other than English--Levels I, II, and III or higher of the same language;

(I) computer science--one course selected from Fundamentals of Computer Science, Computer Science I, or Advanced Placement (AP) Computer Science Principles; and

~~[(I) technology applications-- Computer Science I and Computer Science II or Advanced Placement (AP) Computer Science and at least two courses selected from Computer Science III, Digital Art and Animation, Digital Communications in the 21st Century, Digital Design and Media Production, Digital Forensics, Digital Video and Audio Design, Discrete Mathematics for Computer Science, Fundamentals of Computer Science, Game Programming and Design, Independent Study in Evolving/Emerging Technologies, Independent Study in Technology Applications, Mobile Application Development, Robotics Programming and Design, 3-D Modeling and Animation, Web Communications, Web Design, and Web Game Development; and]~~

(J) speech--Communication Applications.

(3) Districts may offer additional courses from the complete list of courses approved by the State Board of Education to satisfy graduation requirements as referenced in this chapter.

(4) The school district must provide each student the opportunity to participate in all courses listed in subsection (b)(2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b)(2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. A school district must teach a course that is specifically required for high school graduation at

least once in any two consecutive school years. For a subject that has an end-of-course assessment, the district must either teach the course every year or employ options described in Subchapter C of this chapter (relating to Other Provisions) to enable students to earn credit for the course and must maintain evidence that it is employing those options.

(5) For students entering Grade 9 beginning with the 2007-2008 school year, districts must ensure that one or more courses offered in the required curriculum for the recommended and advanced high school programs include a research writing component.

(c) (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 July 20, 2020.

TRD-202002959

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 475-1497



CHAPTER 120. OTHER TEXAS ESSENTIAL KNOWLEDGE AND SKILLS

SUBCHAPTER A. CHARACTER TRAITS

19 TAC §§120.1, 120.3, 120.5, 120.7, 120.9

The State Board of Education (SBOE) proposes new §§120.1, 120.3, 120.5, 120.7, and 120.9, concerning other Texas Essential Knowledge and Skills (TEKS). The proposed new sections would add new TEKS for positive character traits for Kindergarten-Grade 12 in accordance with House Bill (HB) 1026, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: In 2019, the 86th Texas Legislature passed HB 1026, requiring the SBOE to integrate positive character traits into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate. The legislation requires the SBOE to include the following positive character education traits in the standards: courage; trustworthiness, including honesty, reliability, punctuality, and loyalty; integrity; respect and courtesy; responsibility, including accountability, diligence, perseverance, and self-control; fairness, including justice and freedom from prejudice; caring, including kindness, empathy, compassion, consideration, patience, generosity, and charity; good citizenship, including patriotism, concern for the common good and the community, and respect for authority and the law; school pride; and gratitude. The legislation also requires school districts and open-enrollment charter schools to adopt a character education program that includes the required positive character traits.

At the January 2020 SBOE meeting, a discussion item on character traits instruction was presented to the Committee of the Full Board. The committee requested that staff prepare a proposal to add essential knowledge and skills for positive character traits as a new chapter in the Texas Administrative Code.

Proposed new 19 TAC Chapter 120, Subchapter A, would implement HB 1026, 86th Texas Legislature, 2019, by establishing TEKS for positive character traits for Kindergarten-Grade

12. The standards would address requirements by grade bands, including Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. A proposed new section on implementation would also be added to specify the required frequency of the instruction and how the instruction may be provided. The proposed new sections would be implemented beginning with the 2021-2022 school year.

The SBOE approved the proposed new sections for first reading and filing authorization at its July 2, 2020 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by adding essential knowledge and skills for positive character traits as a new chapter in the Texas Administrative Code.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be identifying essential knowledge and skills in positive character traits for Kindergarten-Grade 12 in accordance with HB 1026, 86th Texas Legislature, 2019. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 31, 2020, and ends September 4, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2020 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 31, 2020.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §29.906, as amended by House Bill 1026, 86th Texas Legislature, 2019, which requires the SBOE to integrate positive character traits into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4), 28.002(a) and (c), and 29.906.

§120.1. Implementation of Texas Essential Knowledge and Skills for Positive Character Traits.

(a) The provisions of this subchapter shall be implemented by school districts beginning with the 2021-2022 school year.

(b) School districts and open-enrollment charter schools are required to provide instruction in the essential knowledge and skills for positive character traits outlined in this subchapter at least once in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12.

(c) School districts may provide the required instruction in a variety of arrangements, including through a stand-alone course or by integrating the positive character traits standards in the essential knowledge and skills for one or more courses or subject areas at the appropriate grade levels.

§120.3. Texas Essential Knowledge and Skills for Positive Character Traits, Kindergarten-Grade 2, Adopted 2020.

(a) Introduction.

(1) Character education introduces students to character traits that empower them to be good citizens who are trustworthy, responsible, and caring. The character traits reflect positive beliefs, attitudes, and mindsets; provide opportunities for self-reflection; and permit students to apply effective strategies to make decisions, solve problems, and behave responsibly.

(2) The standards for positive character traits are comprised of four strands: trustworthiness, responsibility, caring, and citizenship. Each strand consists of the following character traits.

(A) Trustworthiness: loyalty, integrity, reliability, and punctuality.

(B) Responsibility: accountability, perseverance, diligence, and self-control.

(C) Caring: kindness, empathy, charity, generosity, patience, consideration, and compassion.

(D) Citizenship: respect, courtesy, concern for the common good and the community, fairness, freedom from prejudice, justice, patriotism, school pride, respect for authority and law, and gratitude.

(3) Students are expected to develop an awareness of self-identity as well as recognize multiple perspectives, difference and diversity, biases, and the social and cultural context in which they live.

(4) The knowledge and skills for positive character traits are organized in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. However, due to the complexity of the concepts, student expectations and knowledge and skills statements cannot be taught, discussed, or viewed in isolation.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Trustworthiness. The student understands how personal choices and actions relate to character building. The student is expected to:

(A) describe how personal choices lead to personal actions;

(B) explain what it means to be trustworthy; and

(C) identify personal actions that build trustworthiness, including being honest and punctual.

(2) Responsibility. The student understands the concept of responsibility and how personal actions demonstrate responsibility. The student is expected to:

(A) describe and give examples of how feelings and beliefs influence personal actions;

(B) describe how to make personal choices before speaking and acting; and

(C) define self-control and identify instances in which self-control is important.

(3) Caring. The student understands how personal actions demonstrate characteristics of caring. The student is expected to:

(A) define patience and identify actions that demonstrate patience; and

(B) explain and identify examples of how actions can demonstrate kindness to others.

(4) Citizenship. The student understands how personal actions can demonstrate good citizenship. The student is expected to:

(A) define fairness and identify examples of fairness in a variety of situations;

(B) define and identify examples of patriotism;

(C) explain what it means to demonstrate respect and courtesy and why it is important to demonstrate respect and courtesy to others; and

(D) define good citizenship.

§120.5. Texas Essential Knowledge and Skills for Positive Character Traits, Grades 3-5, Adopted 2020.

(a) Introduction.

(1) Character education introduces students to character traits that empower them to be good citizens who are trustworthy, responsible, and caring. The character traits reflect positive beliefs, attitudes, and mindsets; provide opportunities for self-reflection; and permit students to apply effective strategies to make decisions, solve problems, and behave responsibly.

(2) The standards for positive character traits are comprised of four strands: trustworthiness, responsibility, caring, and citizenship. Each strand consists of the following character traits.

(A) Trustworthiness: loyalty, integrity, reliability, and punctuality.

(B) Responsibility: accountability, perseverance, diligence, and self-control.

(C) Caring: kindness, empathy, charity, generosity, patience, consideration, and compassion.

(D) Citizenship: respect, courtesy, concern for the common good and the community, fairness, freedom from prejudice, justice, patriotism, school pride, respect for authority and law, and gratitude.

(3) Students are expected to develop an awareness of self-identity as well as recognize multiple perspectives, difference and diversity, biases, and the social and cultural context in which they live.

(4) The knowledge and skills for positive character traits are organized in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. However, due to the complexity of the concepts, student expectations and knowledge and skills statements cannot be taught, discussed, or viewed in isolation.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Trustworthiness. The student understands how personal responsibility relates to being trustworthy. The student is expected to:

(A) identify and define traits of trustworthiness, including reliability and loyalty;

(B) identify and practice strategies for being honest and punctual; and

(C) define and identify examples of unethical behavior.

(2) Responsibility. The student understands how personal choices are associated with responsibility. The student is expected to:

(A) explain what it means to be responsible for personal decisions and actions;

(B) describe positive and negative consequences of personal decisions and actions;

(C) identify and demonstrate ways to practice self-control; and

(D) describe the relationship between being responsible and being accountable.

(3) Caring. The student understands how personal actions demonstrate characteristics of caring. The student is expected to:

(A) describe how feelings impact decision making and behaviors;

(B) explain how one can show patience, consideration, and compassion; and

(C) define empathy and discuss the connection between empathy and charity.

(4) Citizenship. The student understands that personal responsibility is associated with citizenship. The student is expected to:

(A) describe the differences and similarities among gratitude, respect, and courtesy;

(B) compare fairness and justice; and

(C) discuss the importance of obeying laws and rules.

§120.7. Texas Essential Knowledge and Skills for Positive Character Traits, Grades 6-8, Adopted 2020.

(a) Introduction.

(1) Character education introduces students to character traits that empower them to be good citizens who are trustworthy, responsible, and caring. The character traits reflect positive beliefs, attitudes, and mindsets; provide opportunities for self-reflection; and permit students to apply effective strategies to make decisions, solve problems, and behave responsibly.

(2) The standards for positive character traits are comprised of four strands: trustworthiness, responsibility, caring, and citizenship. Each strand consists of the following character traits.

(A) Trustworthiness: loyalty, integrity, reliability, and punctuality.

(B) Responsibility: accountability, perseverance, diligence, and self-control.

(C) Caring: kindness, empathy, charity, generosity, patience, consideration, and compassion.

(D) Citizenship: respect, courtesy, concern for the common good and the community, fairness, freedom from prejudice, justice, patriotism, school pride, respect for authority and law, and gratitude.

(3) Students are expected to develop an awareness of self-identity as well as recognize multiple perspectives, difference and diversity, biases, and the social and cultural context in which they live.

(4) The knowledge and skills for positive character traits are organized in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. However, due to the complexity of the concepts, student expectations and knowledge and skills statements cannot be taught, discussed, or viewed in isolation.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Trustworthiness. The student understands how personal choices and actions build trustworthiness. The student is expected to:

(A) describe what it means to be reliable and loyal;

(B) define and give examples of integrity;

(C) examine the benefits of being trustworthy; and

(D) describe personal actions that demonstrate trustworthiness at school, home, with peers, and within the community.

(2) Responsibility. The student understands how personal beliefs and feelings influence our sense of responsibility. The student is expected to:

(A) examine how personal beliefs, thoughts, and feelings about self can build responsibility;

(B) identify and describe personal role models who demonstrate what it means to be accountable for words and actions;

(C) discuss the benefits of practicing self-control; and

(D) compare the benefits of responsible behavior with the consequences of irresponsible behavior.

(3) Caring. The student understands how characteristics of caring impact personal relationships. The student is expected to:

(A) evaluate one's personal attitudes and mindsets about self and others;

(B) discuss how feelings, decision making, and personal behaviors can influence relationships with others; and

(C) explain and identify examples of how a person can demonstrate empathy through kindness, charity, generosity, and courtesy.

(4) Citizenship. The student understands how the character trait of citizenship impacts personal relationships. The student is expected to:

(A) discuss the roles and responsibilities of citizens;

(B) explain how one's personal actions can impact the perception of others;

(C) describe how justice, fairness, and freedom are related; and

(D) identify and practice a variety of conflict-resolution skills and strategies.

§120.9. Texas Essential Knowledge and Skills for Positive Character Traits, Grades 9-12, Adopted 2020.

(a) Introduction.

(1) Character education introduces students to character traits that empower them to be good citizens who are trustworthy, responsible, and caring. The character traits reflect positive beliefs, attitudes, and mindsets; provide opportunities for self-reflection; and permit students to apply effective strategies to make decisions, solve problems, and behave responsibly.

(2) The standards for positive character traits are comprised of four strands: trustworthiness, responsibility, caring, and citizenship. Each strand consists of the following character traits.

(A) Trustworthiness: loyalty, integrity, reliability, and punctuality.

(B) Responsibility: accountability, perseverance, diligence, and self-control.

(C) Caring: kindness, empathy, charity, generosity, patience, consideration, and compassion.

(D) Citizenship: respect, courtesy, concern for the common good and the community, fairness, freedom from prejudice, justice, patriotism, school pride, respect for authority and law, and gratitude.

(3) Students are expected to develop an awareness of self-identity as well as recognize multiple perspectives, difference and diversity, biases, and the social and cultural context in which they live.

(4) The knowledge and skills for positive character traits are organized in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. However, due to the complexity of the concepts, student expectations and knowledge and skills statements cannot be taught, discussed, or viewed in isolation.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Trustworthiness. The student understands how trustworthiness is viewed in society, politics, and the local and global community. The student is expected to:

(A) examine how the power to make decisions relates to personal actions;

(B) analyze how the decisions and actions of leaders in society, politics, and the local and global community demonstrate integrity; and

(C) examine the legal and social consequences of unethical behavior.

(2) Responsibility. The student understands how leaders demonstrate responsibility in relationships, families, societies, politics, and the global community. The student is expected to:

(A) identify and describe personal role models who demonstrate what it means to be accountable for words and actions;

(B) identify and discuss real-world examples of taking personal responsibility for one's words and actions;

(C) identify and evaluate strategies for practicing self-control in a variety of situations; and

(D) define perseverance and identify strategies for demonstrating perseverance.

(3) Caring. The student understands how characteristics of caring influence society and impact the global community. The student is expected to:

(A) evaluate one's personal attitudes and mindsets about self and others;

(B) discuss how feelings, decision making, and personal behaviors impact relationships within society; and

(C) identify strategies for how a person can show empathy through one's actions.

(4) Citizenship. The student understands how character traits of citizenship influence our personal view of society and the local and global community. The student is expected to:

(A) explain the impact of personal actions on the family, school, and local and global community;

(B) practice the roles and responsibilities of citizenship in a variety of settings;

(C) apply conflict resolutions skills; and

(D) participate in constructive dialogues with those of differing viewpoints.

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 July 20, 2020.

TRD-202002960
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: August 30, 2020
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.121

The Texas State Board of Public Accountancy (Board) proposes the repeal of §523.121, concerning CPE for Non-CPA Owners.

Background, Justification and Summary

The Texas Public Accountancy Act was amended during the last legislative session to eliminate the need for non-CPA firm owners to take Continuing Professional Education. The proposed rule would repeal the Board rule that requires CPE for non-CPA firm owners.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed repeal.

Public Benefit

The adoption of the proposed repeal will be to bring the board rules in compliance with the revised Texas Public Accountancy Act.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed repeal and a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed repeal will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the repeal does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the repeal is in effect, the proposed repeal: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed repeal.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the repeal is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on August 31, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§523.121. CPE for Non-CPA Owners.

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 July 16, 2020.

TRD-202002936

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 305-7842



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 73. LABORATORIES

25 TAC §73.11, §73.52

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §73.11, concerning Certification of Milk and Shellfish Laboratories; and the repeal of §73.52, concerning Fees for the Certification of Milk and Shellfish Laboratories.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove the DSHS State Laboratory rules in Chapter 73, concerning Laboratories, and create new rules in Texas Administrative Code Title 25, Chapter 218, concerning Evaluation of Milk and Shellfish Laboratories.

Currently, the responsibility for the evaluation of milk and shellfish laboratories resides with the DSHS Consumer Protection Division through its Milk and Dairy program. However, the rules are located in Chapter 73, as the DSHS State Laboratory Services Section was previously responsible for the program.

New §§218.1 - 218.7, concerning Evaluation of Milk Laboratories, and new §§218.21 - 218.26, concerning Evaluation of Shellfish Laboratories are published elsewhere in this issue of the *Texas Register*. The new rules in Chapter 218 reflect updated language and laboratory practices concerning the Milk and Dairy program and the Seafood and Aquatic Life program.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §73.11 and §73.52 will remove the rules from Chapter 73, Laboratories.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the rules does not have foreseeable implication relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to DSHS;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public will benefit from adoption of the sections. The public will benefit from the updated laboratory language reflecting current laboratory practices.

Donna Sheppard has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sofia Stifflemire, R.S., at (512) 834-6758 in the DSHS Policy, Standards & Quality and Assurance, Milk and Dairy Unit.

Written comments on the proposal may be submitted to Sofia Stifflemire, Milk and Dairy Unit, Texas Department of State Health Services, P.O. Box 149347, Mail Code 1987, Austin, Texas 78714-9347, street address 8407 Wall Street, Austin Texas 78754; fax (512) 834-6756; or by email to milk.regulatory@dshs.texas.gov. Please indicate "Comments on Chapter 218 Proposed Evaluation of Milk and Shellfish Laboratories."

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

STATUTORY AUTHORITY

The repeals are authorized under Texas Health and Safety Code, Chapter 12 because DSHS will not collect fees for services. The proposed rules are also authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, including by

DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters with DSHS jurisdiction.

The repeals will implement Texas Health and Safety Code, Chapter 12.

§73.11. *Certification of Milk and Shellfish Laboratories.*

§73.52. *Fees for the Certification of Milk and Shellfish Laboratories.*

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 July 20, 2020.

TRD-202002955

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 834-6758



CHAPTER 218. EVALUATION OF MILK AND SHELLFISH LABORATORIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §§218.1 - 218.7, concerning Evaluation of Milk Laboratories; and new §§218.21 - 218.26, concerning Evaluation of Shellfish Laboratories.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove the rules from the DSHS State Laboratory Services Section in Chapter 73, concerning Laboratories, and create new Texas Administrative Code Title 25, Chapter 218, concerning Evaluation of Milk and Shellfish Laboratories.

Currently, the responsibility for the evaluation of milk and shellfish laboratories resides with the DSHS Consumer Protection Division through its Milk and Dairy program. However, the rules are located in Chapter 73, as the DSHS State Laboratory Services Section was previously responsible for the program. The repeal of §73.11, concerning Certification of Milk and Shellfish Laboratories, and the repeal of §73.52, concerning Fees for the Certification of Milk and Shellfish Laboratories, are published elsewhere in this issue of the *Texas Register*.

The new rules in Chapter 218 reflect updated language and laboratory practices concerning the Milk and Dairy program and the Seafood and Aquatic Life program.

SECTION-BY-SECTION SUMMARY

Proposed new Subchapter A, §§218.1 - 218.7, outlines language concerning the Evaluation of Milk Laboratories to reflect the laboratory practices of the Milk and Dairy program.

Proposed new §218.1, Purpose, provides the purpose of the subchapter that establishes the procedures for milk laboratories to become accredited or approved laboratories.

Proposed new §218.2, Definitions, adds definitions to reflect updated milk laboratory practices.

Proposed new §218.3, *Evaluation of Milk Laboratories*, includes the adoption of *Evaluation of Milk Laboratories*, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and the National Conference on Interstate Milk Shipments as a reference for the procedures for the evaluation of milk laboratories.

Proposed new §218.4, Accreditation or Approval Application, describes the application process and includes the current categories of milk laboratories.

Proposed new §218.5, Standards, contains the minimum standards for laboratories applying for or renewing accreditation or approval and includes Milk and Dairy Unit contact information.

Proposed new §218.6, Inspections, adds the language for laboratory inspections for compliance with minimum standards.

Proposed new §218.7, Withdrawal of Accreditation or Approval, adds language for the withdrawal of accreditation or approval.

Proposed new Subchapter B, §§218.21 - 218.26, outlines language concerning the Evaluation of Shellfish Laboratories to reflect the laboratory practices of the Seafood and Aquatic Life program.

Proposed new §218.21, Purpose, provides the purpose of the subchapter that establishes the procedures for shellfish laboratories to be conforming under state law.

Proposed new §218.22, Definitions, adds definitions to reflect updated shellfish laboratory practices.

Proposed new §218.23, *National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish*, includes the adoption of the *National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish*, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and the Interstate Shellfish Sanitation Conference as a reference for the procedures for the evaluation of shellfish laboratories.

Proposed new §218.24, Standards, adds the minimum standards for laboratory conformance and includes Seafood and Aquatic Life Unit contact information.

Proposed new §218.25, Inspections, adds the language for laboratory inspections for compliance with minimum conformance standards.

Proposed new §218.26, Withdrawal of Conforming Status, adds language for the withdrawal of conformance.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implication relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of DSHS employee positions;

- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to DSHS;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public will benefit from adoption of the sections. The public will benefit from the updated laboratory language reflecting current laboratory practices.

Donna Sheppard, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sofia Stifflemire, R.S., at (512) 834-6758 in the DSHS Policy, Standards & Quality and Assurance, Milk and Dairy Unit.

Written comments on the proposal may be submitted to Sofia Stifflemire, Milk and Dairy Unit, Texas Department of State Health Services, P.O. Box 149347, Mail Code 1987, Austin, Texas 78714-9347, street address 8407 Wall Street, Austin Texas 78754; fax (512) 834-6756 or by email to milk.regulatory@dshs.texas.gov. Please indicate "Comments on Chapter 218 Proposed Evaluation of Milk and Shellfish Laboratories."

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed

before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

SUBCHAPTER A. EVALUATION OF MILK LABORATORIES

25 TAC §§218.1 - 218.7

STATUTORY AUTHORITY

The new rules are authorized under Texas Health and Safety Code, Chapters 12 and 435. Texas Health and Safety Code, §435.003 allows DSHS to define what constitutes Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, Grade "A" pasteurized milk products, milk for manufacturing, and dairy products; and provides specifications for the production and handling of milk and milk products listed in Texas Health and Safety Code, §435.003 Subdivision (1). The rules must also be based on, and consistent with, the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products. The rules are also authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters with DSHS jurisdiction.

The new rules will implement Texas Health and Safety Code, Chapter 435.

§218.1. Purpose.

This subchapter establishes the procedures for milk laboratories to become accredited or approved laboratories under state law, Texas Health and Safety Code, Chapters 12 and 435.

§218.2. Definitions.

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

(1) Accreditation--An official approval granted by the department to a laboratory. The accreditation only permits analysis of milk and dairy samples in accordance with the applicable rules based on the process outlined in this subchapter. Accreditation is granted to a laboratory that is capable of correctly performing the analyses for which it is accredited. Accreditation does not imply that the department certifies the results produced by the accredited laboratory.

(2) Antibiotic milk laboratory--A laboratory only authorized to screen for antibiotics in milk manufacturing.

(3) Approval--An official approval granted by the department to a laboratory. The approval only permits analysis of milk samples for antibiotic testing in accordance with applicable rules based on the process outlined in this subchapter. Approval is granted to a laboratory that is capable of correctly performing analyses for which it is approved. Approval does not imply that the department certifies the results produced by the approved laboratory.

(4) Department--The Department of State Health Services.

(5) Evaluation--An onsite inspection performed by the department that includes a fact-finding process in which information and observations are collected for the purpose of evaluation of the laboratory's compliance with established accreditation or approval standards.

(6) Officially designated laboratory--A commercial laboratory or a milk industry laboratory officially designated by the department for the analysis of milk, milk products, milk for manufacturing, or frozen desserts.

(7) Official laboratory--A biological, chemical, or physical laboratory, which is under the direct supervision of the department for the analysis of milk, milk products, milk for manufacturing, or frozen desserts. Official laboratories include full service laboratories.

(8) Split samples--An annual proficiency testing program that includes bacterial count, coliform count, somatic cell count, presence of antibiotics, presence of phosphatase, and presence of added water, contingent on the milk laboratory accreditation or approval, which is coordinated by the Milk and Dairy Unit, Department of State Health Services, 8407 Wall Street, Austin, Texas 78754, to determine if the milk laboratory is qualified in performing the analyses.

§218.3. Evaluation of Milk Laboratories.

The department adopts by reference the document entitled, Evaluation of Milk Laboratories, as amended, published by the U.S. Department of Health and Human Services, Public Health Service, U.S. Food and Drug Administration, and the National Conference on Interstate Milk Shipments. The document provides the procedures for the evaluation of milk laboratories. Copies are available online at <http://www.dshs.texas.gov/milk> and for review during normal business hours in the Milk and Dairy Unit, Department of State Health Services, 8407 Wall Street, Austin, Texas 78754.

§218.4. Accreditation or Approval Application.

(a) A laboratory must submit an application for accreditation or approval to the department on a form specified by the department at <http://www.dshs.texas.gov/milk>.

(b) A laboratory may apply for accreditation in a single category or any combination of categories from the following list:

- (1) antibiotic milk laboratory;
- (2) milk industry laboratory; or
- (3) full service milk laboratory.

(c) A laboratory may apply for approval as an antibiotic milk laboratory.

(d) The department shall perform an evaluation for each milk laboratory applying for accreditation or approval.

§218.5. Standards.

(a) The requirements specified in §218.3 of this title (relating to Evaluation of Milk Laboratories) are minimum standards for a laboratory applying for or renewing accreditation or approval in Texas. These specifications are available online at <http://www.dshs.texas.gov/milk> and for review during normal business hours at the Milk and Dairy Unit, Department of State Health Services, 8407 Wall Street, Austin, Texas 78754.

(b) Each applicant laboratory will be evaluated, at a minimum on the following factors:

- (1) milk testing procedure performance of staff;
- (2) quality assurance plan;
- (3) manuals of procedures;
- (4) performance on split samples;
- (5) equipment;
- (6) calibrations and standards;

(7) methodology;

(8) facilities;

(9) sample acceptance policies;

(10) sample tracking;

(11) record keeping;

(12) reporting; and

(13) interpretation of results.

(c) A laboratory must meet all minimum standards, pass annual split samples, and pass an onsite inspection at least biennially to be accredited or approved.

§218.6. Inspections.

The department may conduct onsite inspections of laboratories to ascertain adherence to minimum standards as specified in §218.3 of this title (relating to Evaluation of Milk Laboratories) and the effectiveness of the accreditation or approval standards. For laboratories for which the department serves as both the evaluating and accreditation or approval authority, onsite inspections will be conducted at least biennially.

§218.7. Withdrawal of Accreditation or Approval.

(a) A laboratory that fails to meet requirements may be placed on provisionally accredited or approved status:

(1) by scoring outside the acceptable limits on a set of split samples;

(2) by having serious deficiencies at the time of an onsite inspection; or

(3) by failing to notify the department within 30 days of major changes which might impair analytical capability (personnel, equipment, or location).

(b) Failure on two consecutive split samples or failure to correct major deficiencies following an onsite inspection, within 60 days, may result in the withdrawal of accreditation or approval. Withdrawal of accreditation or approval shall remain in effect until measures are taken by the laboratory to attain compliance and an additional onsite inspection determines that the major deficiencies are corrected at a time that is agreeable to both parties.

(c) Accreditation or approval may be suspended or revoked immediately if the minimum standards of the U.S. Food and Drug Administration require suspension or revocation, or if continued operation of the laboratory will jeopardize public health.

(d) Accreditation or approval shall be revoked for a laboratory that submits as its own work the results for analysis of any split samples that was analyzed by a different laboratory. The laboratory may not reapply for accreditation or approval for a period of not less than three years.

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 July 20, 2020.

TRD-202002956

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 834-6758

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SUBCHAPTER B. EVALUATION OF SHELLFISH LABORATORIES

25 TAC §§218.21 - 218.26

STATUTORY AUTHORITY

The new rules are authorized under Texas Health and Safety Code, Chapters 12 and 435. Texas Health and Safety Code, §435.003 allows DSHS to define what constitutes Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, Grade "A" pasteurized milk products, milk for manufacturing, and dairy products; and provides specifications for the production and handling of milk and milk products listed in Texas Health and Safety Code, §435.003 Subdivision (1). The rules must also be based on, and consistent with, the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products. The rules are also authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters with DSHS jurisdiction.

The new rules will implement Texas Health and Safety Code, Chapter 435.

§218.21. Purpose.

This subchapter establishes the procedures for shellfish laboratories to be conforming under state law, Texas Health and Safety Code, Chapters 12 and 435.

§218.22. Definitions.

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

(1) Conforming status--An official status granted by the department to a laboratory. The official status permits the analysis of shellfish samples in accordance with applicable rules based on the process outlined in this subchapter. Conforming status means that a laboratory has been found to be capable of correctly performing the analyses for which it is approved.

(2) Critical nonconformity--A deviation of a laboratory requirement which has the highest likelihood of adversely affecting the quality of the analytical results.

(3) Department--The Department of State Health Services.

(4) Evaluation--A fact-finding process performed by the department in which information and observations are collected for the purpose of evaluating the laboratory's compliance with established standards. Evaluation includes an onsite inspection but can, under a certain circumstance, be conducted by desk audit.

(5) Key nonconformity--A deviation of laboratory requirement that has a significant potential to adversely affect the quality of the analytical results.

(6) Other nonconformity--A deviation of a laboratory requirement which does not normally compromise the quality of the analytical results, but generally serves to enhance the overall operation of the laboratory.

§218.23. National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

The department adopts by reference the document entitled, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, as amended, published by the U.S. Department of Health and Human Services, Public Health Service, U.S. Food and Drug Administration, and the Interstate Shellfish Sanitation Conference. The document provides the procedures for the evaluation of shellfish laboratories. Copies are available online at <http://www.dshs.texas.gov/seafood> and for review during normal business hours at the Seafood and Aquatic Life Unit, Department of State Health Services, 8407 Wall Street, Austin, Texas 78754.

§218.24. Standards.

(a) The minimum standards for conforming status are specified in §218.23 of this title (relating to National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish), and the U.S. Food and Drug Administration Shellfish Laboratory Evaluation Checklists. These specifications are available online at <http://www.dshs.texas.gov/seafood> and for review during normal business hours at the Seafood and Aquatic Life Unit, Department of State Health Services, 8407 Wall Street, Austin, Texas 78754.

(b) Each laboratory will be evaluated, at a minimum on the following factors:

- (1) credentials and performance of staff;
- (2) quality assurance plan;
- (3) manuals of procedures;
- (4) staff training program;
- (5) corrective action for any deficiencies and nonconformities;
- (6) performance on proficiency test samples;
- (7) equipment;
- (8) calibrations and standards;
- (9) methodology;
- (10) facilities;
- (11) sample acceptance policies;
- (12) sample tracking;
- (13) record keeping;
- (14) reporting; and
- (15) interpretation of results.

(c) A laboratory must meet all minimum standards and pass an inspection at a minimum of every three years to maintain conforming status.

(d) Laboratory status is determined by the number and types of nonconformities found in the evaluation using the specifications in §218.23 of this title (relating to National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish), and the standardized criteria contained in the U.S. Food and Drug Administration Shellfish Laboratory Evaluation Checklists.

§218.25. Inspections.

The department may conduct onsite inspections of laboratories to ascertain adherence to minimum standards as specified in §218.23 of this title (relating to National Shellfish Sanitation Program Guide for the

Control of Molluscan Shellfish) and the U.S. Food and Drug Administration Shellfish Laboratory Evaluation Checklists. Inspections will be conducted on at least a three-year basis.

§218.26. Withdrawal of Conforming Status.

(a) A laboratory found to be in conforming status, with noted nonconformities, has up to 90 days to successfully correct all nonconformities noted in the evaluation. After this period, the laboratory's status will be downgraded to nonconforming if any key nonconformities remain to be successfully corrected. As a result, data being generated by the laboratory will no longer be acceptable for use in support of the National Shellfish Sanitation Program.

(b) A laboratory found to be in provisionally conforming status has up to 60 days to successfully correct all nonconformities noted in the evaluation. After this period, the laboratory's status will be assigned to one of the following.

(1) Conforming status if all critical and key nonconformities have been successfully corrected.

(2) Nonconforming status if any critical or key nonconformities remain to be successfully corrected. As a result, data generated by the laboratory will no longer be acceptable for use in support of the National Shellfish Sanitation Program.

(c) A laboratory found to be in nonconforming status has up to 30 days to demonstrate successful correction of all nonconformities found. After this period, the laboratory's status will be assigned to one of the following.

(1) Conforming status if all critical and key nonconformities have been successfully corrected.

(2) Nonconforming status if any critical or key nonconformities remain to be successfully corrected. As a result, data generated by the laboratory will no longer be acceptable for use in support of the National Shellfish Sanitation Program.

(d) If a laboratory is found to be in nonconforming status for failure to successfully implement the required corrective action, or for having repeated critical or key nonconformities in consecutive evaluations, then the department will ensure that an action plan is developed to correct the situation in an acceptable and expeditious manner or discontinue use of the laboratory to support the National Shellfish Sanitation Program.

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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Barbara L. Klein

General Counsel

Department of State Health Services

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For further information, please call: (512) 834-6758



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 17. TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

30 TAC §17.14, §17.17

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §17.14 and §17.17.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking would amend the provisions in Chapter 17 to update the requirements of the Tax Relief for Pollution Control Property Program based on the recommendations and advice of the Tax Relief for Pollution Control Property Advisory Committee (committee), and other changes identified by the commission. On December 13, 2018, the committee submitted these recommendations to the TCEQ as part of the triennial review of the Tier I Table located in §17.14(a) and the Expedited Review List (ERL or k-list) included as part of §17.17(b). Subsequently, in a letter dated December 9, 2019, the committee advised the commission on how to determine use percentages for heat recovery steam generator (HRSG) property applications. HRSGs are typically used in the production of electricity, allowing a power plant to increase production efficiency by using waste heat from combustion to generate steam that drives a steam turbine to produce additional electricity. The commission solicited advice from the committee in response to the May 3, 2019 opinions by the Texas Supreme Court in *Brazos Electric Power Cooperative v. Texas Commission on Environmental Quality*, 576 S.W.3d 374 (Tex. 2019) and *Texas Commission on Environmental Quality v. Brazos Valley Energy LLC*, 582.W.3d 277 (Tex. 2019), concerning HRSG use determinations.

The commission is required by §17.14(b) to review, and update as necessary, the items on the Tier I Table included in §17.14(a) at least once every three years. The commission is also required by Texas Tax Code, §11.31(l) to review, and update as necessary, the items on the ERL at least once every three years. The committee evaluated the Tier II and Tier III applications submitted from 2014 through 2018 that received positive use determinations (PUD) to determine whether the pollution control property, if any, had been demonstrated consistently to be wholly used as pollution control property in the same manner on each application for any given property. The committee determined that 11 types of pollution control property currently submitted as Tier II property should instead be considered Tier I property in the Tier I Table and no longer require a Tier II application. This rulemaking would fulfill the requirements for the commission to review and update the property included on the ERL and Tier I Table in Chapter 17 at least once every three years.

This proposed rulemaking would amend Chapter 17 to resolve outstanding issues stemming from the Texas Supreme Court's May 3, 2019 opinions regarding lawsuits filed after the commission upheld 21 negative use determinations (NUDs) for HRSGs at power plants, in addition to addressing changes related to the triennial review of the ERL and Tier I Table. HRSGs are included on the property listed at Texas Tax Code, §11.31(k), and in §17.17(b) as the ERL. Property on the k-list consists of facilities, devices, or methods for the control of air, water, or land pollution for which an application may be submitted to the TCEQ requesting a use determination for an ad valorem tax exemption.

Applications for use determinations may be submitted under Tier I, Tier II, Tier III, and, previously, Tier IV status. A Tier I application may be submitted for property used listed on the Tier I

Table that is used wholly for pollution control and used for pollution control in accordance with the description listed in the Tier I Table for that property type. A Tier II application may be submitted for property that is not listed on the Tier I Table but is used wholly for the control of air, water, and/or land pollution but is not located on the Tier I Table. A Tier III application must be submitted for property that is used partially for pollution control. For Tier III applications, a cost analysis procedure (CAP) is used to determine the proportion of the property used for pollution control purposes. Tier IV applications were previously submitted for property listed on the k-list and included the applicants' proposed method for calculating a use percentage. Tier IV applications were eliminated in a rulemaking adopted by the commission on November 18, 2010 (35 TexReg 10964) to implement the uniformity requirements added to Texas Tax Code, §11.31 with the passage of House Bill (HB) 3206 and HB 3544, 81st Texas Legislature, 2009.

The Tier III CAP methodology compares the property containing pollution control features to similar property without those pollution control features and accounts for the value of any marketable product produced by the property. The Tier III review methodology ensures the inputs for all applications submitted within the Tier III level are reviewed consistently and that use determinations are issued based on calculations of the actual use percentage for each individual case. However, if the commission has sufficient information to establish partial use percentages appropriate to all property within a category of equipment, the commission may add it to the Tier I Table with the associated partial use percentage.

In 2008, 2009, and 2012, Tier III and Tier IV applications were submitted to the TCEQ Tax Relief for Pollution Control Property Program requesting PUDs for HRSGs and associated equipment at Texas power plants. The TCEQ executive director issued NUDs for the HRSG applications submitted, and 17 appeals were filed. At the September 24, 2014, Commissioners' Agenda, the commission affirmed the executive director's NUDs and denied all 17 of the appeals. In response, 12 lawsuits were filed. The lawsuits were consolidated for trial and divided into two groups based on the type of application submitted, either Tier III or Tier IV. The district court upheld the TCEQ's determinations for both groups, but the rulings were appealed. The appellate court hearing the Tier III group affirmed the TCEQ's reading of Texas Tax Code, §11.31 and its NUDs. The appellate court hearing the Tier IV group disagreed with the TCEQ's arguments concerning the k-list and found that the TCEQ abused its discretion in issuing NUDs for the HRSGs. Petitions for Review were filed with the Texas Supreme Court for both cases.

The Texas Supreme Court held that the TCEQ abused its discretion in issuing NUDs and remanded the cases to the commission for further proceedings consistent with its findings. The Texas Supreme Court found that Texas Tax Code, §11.31 entitles a person to an exemption from ad valorem taxation for property that the person owns and that is used, in whole or in part, to control pollution. The Texas Supreme Court also found that for property on the k-list, the executive director's sole responsibility is to determine what proportion of the property is purely productive and what proportion is for pollution control. However, the executive director may not determine that the pollution control proportion is zero or negative. Finally, the Texas Supreme Court also found that the TCEQ, through rulemaking, may remove an item "from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits." The commission has not found compelling ev-

idence to support removal of HRSGs from the k-list; therefore, the commission must find that HRSGs qualify, at least in part, as pollution control property. The Texas Supreme Court did not identify the method to determine use percentages for HRSGs nor did the Texas Supreme Court address the CAP formula or its application.

To examine these issues and the Texas Supreme Court's findings as they relate to future HRSG applications, the commission solicited advice from the committee. In a letter dated July 19, 2019, the TCEQ asked the committee to analyze three questions in its review of the issues: 1) whether the current CAP is adequate to determine use percentages for HRSGs; 2) if the CAP is inadequate, what is an appropriate method for determining use percentages for HRSGs; and 3) whether HRSGs should be removed from the ERL. In a response letter dated December 9, 2019, the committee submitted its formal majority report and recommendation.

This proposed rulemaking addresses the committee's December 9, 2019 recommendation concerning HRSGs and its December 13, 2018 recommendations regarding the Tier I Table and ERL, except when deviation from these recommendations is needed to ensure the rule appropriately and consistently describes pollution control property eligible for a PUD under the Tax Relief for Pollution Control Property Program. In addition, the commission proposes amendments, as necessary, that were not specifically recommended by the committee but that remain consistent with its advice and to accommodate the addition of HRSGs to the Tier I Table. Non-substantive revisions are proposed to the sections open to address Chapter 17 Tier I Table and associated changes.

In a concurrent rulemaking, the commission proposes to amend the provisions in Chapter 18, Rollback Relief for Pollution Control Requirements, to mirror the proposed changes in Chapter 17.

Section by Section Discussion

The revisions proposed to Chapter 17 are intended to make the rules consistent with the committee's recommendations provided to the commission, except where explicitly discussed. The committee recommended, and the commission proposes, adding specific pollution control property to the Tier I Table in §17.14(a). Under the current rules, §17.14(a) requires an applicant to submit a Tier III application for any of the proposed property additions if the property is used for pollution control purposes at a percentage different than what is listed on the table or, at the request of the executive director, if the equipment is not being used in a standard manner. These existing criteria in §17.14(a) are not proposed for revision. Any of the property proposed for inclusion in the Tier I Table will need to continue to adhere to these existing requirements.

§17.14, Tier I Pollution Control Property

The proposed changes to §17.14 include amending the rule language to allow items listed on the Tier I Table with partial use percentages to be eligible for a Tier I application and to add additional property to the Tier I Table. Each property item in the Tier I Table currently has a table number, the media, property name, property description, and use percentage. The proposed additions to the Tier I Table also include this same information.

The proposed amendments to §17.14(a) clarify that a Tier III application is still required if a marketable product is recovered from property listed in the Tier I Table unless that property is designated with a partial use percentage on the Tier I Table. This

revision is necessary because current subsection (a) directs an applicant to file a Tier III application if a marketable product is recovered from the property listed in the Tier I Table, without exception. Because HRSGs may generate a marketable product, which was considered during the calculation of the appropriate use percentage and is accounted for in the 65% partial use determination proposed in this rulemaking, the eligibility description is amended to indicate property items listed on the Tier I Table with a partial use percentage may nevertheless be eligible for Tier I applications.

The commission proposes to amend the first sentence of the introductory paragraph to the Tier I Table in §17.14(a) to require a Tier I application for the property listed in the table whether it is used wholly or partly for pollution control purposes. The existing requirement in subsection (a) designates that a Tier I application is required for property used wholly, or 100%, as pollution control property. However, the proposed amendment to the Tier I Table includes HRSGs at a partial use percentage of 65%. Therefore, under the proposed rule, Tier I applications for HRSGs would be appropriate. The commission further proposes adding an exception for HRSGs listed as a partial use percentage from the description of the Tier I Table contents. This proposed revision accommodates the addition of HRSGs to the Tier I Table, which currently only contains property used wholly as pollution control. The table would be expanded to include HRSGs as the only piece of property eligible for a Tier I PUD at a partial use percentage. Although all the other property currently listed in the Tier I Table must be used wholly for pollution control property to be eligible for filing as a Tier I application, the commission previously listed property with partial use percentages on the Tier I Table. The property was subsequently removed because the usage of such property could not be definitively verified as representative of standard use based on the information available about the uses of the property at the time. However, for this proposed rulemaking, the committee reviewed current data and determined 65% reasonably represents the proportion of HRSGs used as pollution control when HRSGs are used in a standard manner.

The commission proposes item numbers A-90, A-91, A-116 through A-120, A-190, S-29, M-23 and M-24 for addition to the Tier I Table in §17.14(a), all at 100% pollution control property. Items A-90, A-91, A-116 through A-120, A-190, and M-23 would be added as the committee recommended. The commission agrees with the committee's recommendations to revise §17.14(a) and add Dry Low-NO_x Emissions Systems; Lean-Burn Portions of Reciprocating Engines; Fixed Storage Tank Roofs; Submerged Fill Pipes; Dual Mechanical Pump Seals; Seal-less Pumps; Airless Paint Spray Guns; and Remote Controlled Block Valves to the Tier I Table because they are used wholly for pollution control purposes. These items are described in the proposed rule language and are not further discussed in the Section by Section Discussion of this preamble.

For each of the items proposed for addition to the Tier I Table, the committee based its recommendation that this property should be Tier I level property on historical Tier II application submittals that demonstrated the property was consistently used wholly for pollution control, as discussed in the background and summary portion of this preamble. The proposed item numbers would designate air pollution control equipment, indicated by the letter "A," solid waste management pollution control equipment, indicated by the letter "S," and miscellaneous pollution control equipment, indicated by the letter "M," as recommended by the committee in its December 2018 formal majority report. The committee's rec-

ommendation to add the property to the Tier I Table was based on its review and analysis of Tier II applications submitted from 2014 through 2018 that consistently received a PUD of 100% each time an applicant requested a use determination for such property. Although the proposed item numbers are added to the Tier I Table at 100% pollution control property, an applicant is still required under §17.14(a) and §17.17(a) to submit a Tier III application if such property has productive benefit or is not used as described in the table.

The commission proposes to add item number A-92 to the Tier I Table for HRSGs. The proposed property item would be listed as a boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions and a partial use determination of 65%. To arrive at the 65% partial use percentage, the committee evaluated data provided in the 2019 Gas Turbine World Handbook and calculated the average of both the environmental benefit and the productive benefit of a combined-cycle plant operating a HRSG versus a similar simple-cycle plant without a HRSG. For the environmental benefit estimation, the committee considered the best available control technology (BACT) emission limit for a combined-cycle facility of 2 parts per million (ppm) and for a simple-cycle facility of 5 ppm to determine the decrease in nitrogen oxides emissions between two types of facilities on a pound per megawatt-hour basis. To determine the production benefit, the committee calculated both the average increase in plant output and average improvement in heat rate attributable to combined-cycle operation (due to the HRSG) when compared to simple-cycle operation. The committee averaged the percentage results for the environmental benefit and the nonproductive use to derive an environmental use of 65%. The commission agrees with the approach recommended by the committee to derive a 65% PUD for a HRSG.

The commission proposes to amend the Tier I Table in §17.14(a) to add item S-29 for reclamation equipment. The proposed property description excludes commercial reclamation equipment from eligibility as Tier I property. Commercial reclamation equipment is equipment owned and rentable by companies that provide reclamation services. The committee did not identify the explicit exclusion of commercial reclamation equipment in its recommendation. However, the commission proposes to clarify that the construction equipment used for commercial land reclamation purposes from which the environmental benefit is derived from the use or characteristics of the good or service produced or provided, would not be entitled to a PUD under the Tax Relief for Pollution Control Property Program. Equipment used for such purposes are prohibited by the provisions in §17.6(1)(A) and (B) and Texas Tax Code, §11.31(a).

The commission proposes to amend the Tier I Table in §17.14(a) to add item M-24 for nondestructive pipeline testing to the Tier I Table. The commission proposes a change to the committee's recommended proposed property description to clarify the property that is intended to be eligible, and property intended to be ineligible, as Tier I Table property. The committee recommended expenditures such as radiography as the Tier I Table description. Instead, the commission proposes that expenditures used for nondestructive pipeline testing are explicitly included, but expenditures used for non-pollution control purposes are explicitly excluded. The explicit inclusion of nondestructive pipeline testing as part of the proposed property description is necessary to state the item that is intended to be covered as the Tier I property rather than only providing an example of the property. The explicit exclusion of expenditures for non-pollution control pur-

poses maintains consistency with requirements in §17.4(a) requiring that eligible property meet or exceed environmental requirements for pollution control.

§17.17, *Partial Determinations*

The commission proposes to amend §17.17(a) to add language that clarifies what property requires a Tier III application. The proposed revisions state that a Tier III application requesting a partial determination must be submitted for all property that is either not used as described in the Tier I Table located in §17.14(a), or does not fully satisfy the requirements for a 100% PUD under Chapter 17. For example, HRSG applications are required to be Tier III applications if the HRSG is used differently than described in the proposed Tier I Table. This proposed change was not recommended by the committee explicitly but is captured in the committee's acknowledgement that revisions other than those specifically contained in the December 2019 letter may be needed to accomplish the goal of the proposed rulemaking. The commission's proposed language to §17.17(a) would ensure that if the use of any of the property proposed to be added to the Tier I Table in §17.14(a) deviates from the pollution control property description within the table, the environmental use is appropriately considered and accounted for as was intended in the program's design.

The proposed amendment to §17.17(a) differs from the proposed changes to 30 TAC §18.30 in the concurrent rulemaking because the existing rule language in each is not the same; however, the intent of both proposed revisions is the same.

The commission proposes amendments to the ERL in §17.17(b) to revise the description for HRSGs, listed as item number B-8. The committee recommended describing a HRSG in the §17.14(a) Tier I Table as a boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions. Although the committee did not recommend any changes to the existing ERL, the commission proposes replacing the existing HRSG description in the ERL in §17.17(b) with the committee's recommended HRSG description. This proposed change streamlines the description of HRSG and specifies the property intended to qualify as a HRSG under the Chapter 17 rules. The proposed change to the ERL was not explicitly recommended by the committee but remains consistent with its advice. This proposed amendment to the ERL is not intended to change the type of property currently covered under the Tax Relief for Pollution Control Property Program. The proposed change to the HRSG description in the Chapter 17, §17.17(b) ERL is also proposed to the Chapter 18, §18.26 ERL to maintain consistency between the Chapters 17 and 18 programs.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, fiscal implications may be anticipated for the agency due to a possible decrease in fee revenue.

This rulemaking states that certain Tier II pollution control property should instead be considered Tier I property in the Tier I Table; this removes the requirement for a Tier II application for those property owners. The rulemaking also adds HRSGs to the Tier I Table. These changes may have a fiscal impact to the agency because the Tier I application fees are less than the Tier II application fees. The application fee for Tier I is \$150; the Tier II application fee is \$1,000. Because this rulemaking expands the properties eligible under the Tier I Table and reduces those

eligible to be submitted in a Tier II application, the agency may experience a decrease in fee revenue. The amount of the revenue decrease cannot be determined because the program is voluntary, and the property types vary from year to year.

The rulemaking may also have an impact to units of local government because of the inclusion of HRSGs in the Tier I Table. Once an applicant receives a PUD from the commission, then they are able to submit that for an exemption from local property taxes. The effect on local property tax revenue cannot be determined because the program is voluntary, and the property types submitted for PUDs vary from year to year.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with the state law and regulations that require a review of the Tier I Table and ERL every three years. In this review, the commission is proposing changes to the Tier I Table, and to the ERL only for consistency with the Tier I Tables changes. In addition, the public will benefit because portions of this rulemaking will bring the regulations into compliance with the May 3, 2019 rulings by the Texas Supreme Court.

The proposed rulemaking may result in a fiscal implication for businesses or individuals because of the reclassification of certain types of property in the Tier I Table. This may result in a decrease in application fees paid to the agency. The exact level of fiscal impact cannot be determined because it is a voluntary program and property types submitted for PUDs vary from year to year.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative

appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions or eliminate current employee positions. The proposed rulemaking may result in a decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact the state's economy positively or negatively.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed amendments in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined the rules do not meet the definition of a "Major environmental rule." Under Texas Government Code, §2001.0225, a "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking amends the Tax Relief for Pollution Control Property rules. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax relief program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules would not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission invites public comment regarding this draft regulatory impact analysis determination.

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed amendments. Enforcement of these proposed rules would be neither a statutory nor constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-031-018-AI. The comment period closes on August 31, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Elizabeth Sartain, Air Quality Planning Section, at (512) 239-3933.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other laws that are necessary and convenient to the exercise of its jurisdiction and powers; and TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The rules are also proposed under Texas Tax Code, §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The proposed amendments implement Texas Tax Code, §11.31.

§17.14. Tier I Pollution Control Property.

(a) For the property listed in the Tier I Table located in this subsection that is used wholly for pollution control purposes, a Tier I application is required. A Tier I application must not include any property that is not listed in this subsection or that is used for pollution control purposes at a use percentage that is different than what is listed in the table. Unless otherwise designated with a partial use percentage on the Tier I Table, if [H] a marketable product is recovered (not including materials that are disposed) from property listed in this subsection, a Tier III application is required.

Figure: 30 TAC §17.14(a)

[Figure: 30 TAC §17.14(a)]

(b) The commission shall review and update the Tier I Table at least once every three years.

(1) The commission may add an item to the table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

(2) The commission may remove an item from the table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

§17.17. Partial Determinations.

(a) A Tier III application requesting a partial determination must be submitted for all property that is either not used as described

on the Tier I Table located in §17.14(a) of this title (relating to Tier I Pollution Control Property), or does not fully satisfy the requirements for a 100% positive use determination under this chapter. For all property for which a partial use determination is sought, the cost analysis procedure (CAP) described in subsection (c) of this section must be used.

(b) The Expedited Review List in this subsection is adopted as a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. This table consists of the list located in Texas Tax Code, §11.31(k) with changes as authorized by Texas Tax Code, §11.31(l). The commission shall review and update the items listed in this table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits. The commission may remove an item from this table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

Figure: 30 TAC §17.17(b)

[Figure: 30 TAC §17.17(b)]

(c) Consistent with subsection (a) of this section, the following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property that is filed on a Tier III application:

(1) If no marketable product results from the use of the property, use the following equation and enter "0" for the net present value of the marketable product (NPVMP):

Figure: 30 TAC §17.17(c)(1) (No change.)

(2) For property that generates a marketable product (MP), the net present value (NPV) of the MP is used to reduce the partial determination when used in the equation in the figure in paragraph (1) of this subsection. The value of the MP is calculated by subtracting the production costs of the MP from the market value of the MP. This value is then used to calculate the NPV of the MP (NPVMP) over the lifetime of the equipment. The equation for calculating NPVMP is as follows:

Figure: 30 TAC §17.17(c)(2) (No change.)

(d) If the cost analysis procedure of this section produces a negative number or a zero, the property is not eligible for a positive use 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.

Filed with the Office of the Secretary of State on July 17, 2020.

TRD-202002948

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 239-2678



CHAPTER 18. ROLLBACK RELIEF FOR POLLUTION CONTROL REQUIREMENTS

30 TAC §§18.25, 18.26, 18.30

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§18.25, 18.26, and 18.30.

Background and Summary of the Factual Basis for the Proposed Rules This proposed rulemaking implements Senate Bill (SB) 2, Section 44, 86th Texas Legislature, 2019, which requires revising the title of Chapter 18 from "Rollback Relief for Pollution Control Requirements" to "Voter-Approval Tax Rate Relief for Pollution Control Requirements."

The proposed rulemaking would amend the provisions in Chapter 18 to mirror the changes proposed in the concurrent proposal to amend 30 TAC Chapter 17. The TCEQ proposes amendments to Chapter 17 to update requirements for the Tax Relief for Pollution Control Property Program based on formal recommendations and advice submitted to the commission by the Tax Relief for Pollution Control Property Advisory Committee (committee), and other changes identified by the TCEQ. The committee does not provide advice on the Voter-Approval Tax Rate Relief for Pollution Control Program, but the TCEQ proposes amendments to Chapter 18 to keep the rules for the two programs consistent.

The committee submitted a set of recommendations in a letter dated December 13, 2018 as part of a triennial review of the Tier I Table at 30 TAC §17.14(a) and the Expedited Review List (ERL or k-list) at 30 TAC §17.17(b). Subsequently, in a letter dated December 9, 2019, the committee advised the commission on how to determine use percentages for heat recovery steam generator (HRSG) property applications. The commission solicited this advice in response to the May 3, 2019 opinions of the Texas Supreme Court in *Brazos Electric Power Cooperative v. Texas Commission on Environmental Quality*, 576 S.W.3d 374 (Tex. 2019) and *Texas Commission on Environmental Quality v. Brazos Valley Energy LLC*, 582.W.3d 277 (Tex. 2019) concerning HRSG use determinations under Chapter 17 and Texas Tax Code, §11.31.

HRSGs are typically used in the production of electricity, allowing a power plant to increase production efficiency by using waste heat from combustion to generate steam that drives a steam turbine to produce additional electricity. The revisions proposed to address HRSGs in this rulemaking are based on proposed amendments to Chapter 17 intended to resolve outstanding issues stemming from the Texas Supreme Court's May 3, 2019 opinions regarding lawsuits filed after the commission upheld 21 negative use determinations (NUDs) for HRSGs at power plants. Because HRSGs are included on the property listed at Texas Tax Code, §11.31(k), and in §17.17(b) as the ERL, an applicant may submit an application to the TCEQ requesting a use determination for an ad valorem tax exemption. Applications were submitted in 2008, 2009, and 2012, to the Chapter 17 Tax Relief for Pollution Control Program requesting PUDs for HRSGs and associated equipment at Texas power plants. The TCEQ executive director issued NUDs for the HRSG applications submitted, and 17 appeals were filed. At the September 24, 2014 Commissioners' Agenda, the commission affirmed the executive director's NUDs and denied all 17 of the appeals. In response, 12 lawsuits were filed. The lawsuits were consolidated for trial and divided into two groups based on the tier of application submitted, either Tier III or Tier IV. The district court upheld the TCEQ's determinations for both groups, but the rulings were appealed. The appellate court hearing the Tier III group affirmed the TCEQ's reading of Texas Tax Code, §11.31 and its NUDs. The appellate court hearing the Tier IV group disagreed with the TCEQ's arguments concerning the k-list and found that the TCEQ abused its discretion in issuing NUDs for the HRSGs. Petitions for Review were filed with the Texas Supreme Court for both cases.

The Texas Supreme Court held that the TCEQ abused its discretion in issuing NUDs and remanded the cases to the commission for further proceedings consistent with its findings. The Texas Supreme Court found that Texas Tax Code, §11.31 entitles a person to an exemption from ad valorem taxation for property that the person owns and that is used, in whole or in part, to control pollution. The Texas Supreme Court also found that for property on the k-list, the executive director's sole responsibility is to determine what proportion of the property is purely productive and what proportion is for pollution control. However, the executive director may not determine that the pollution control proportion is zero or negative. Finally, the Texas Supreme Court also found that the TCEQ, through rulemaking, may remove an item "from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits." The commission has not found compelling evidence to support removal of HRSGs from the k-list; therefore, the commission must find that HRSGs qualify, at least in part, as pollution control property. The Texas Supreme Court did not identify the method to determine use percentages for HRSGs, nor did the Texas Supreme Court address the CAP formula or its application.

To examine these issues and the Texas Supreme Court's findings as they relate to future HRSG applications, the commission solicited advice from the committee. In a letter dated July 19, 2019, the TCEQ asked the committee to analyze three questions in its review of the issues: 1) whether the current CAP is adequate to determine use percentages for HRSGs; 2) if the CAP is inadequate, what is an appropriate method for determining use percentages for HRSGs; and 3) whether HRSGs should be removed from the ERL. In a response letter dated December 9, 2019, the committee submitted its formal majority report and recommendations.

This proposed rulemaking addresses the committee's December 9, 2019 recommendation concerning HRSGs and its December 13, 2018 recommendations regarding the Tier I Table and ERL, except when deviation from these recommendations is needed to ensure the rule appropriately and consistently describes pollution control property eligible for a PUD under the Chapter 17 Tax Relief for Pollution Control Property Program.

Additionally, the commission proposes amendments to Chapter 18 to incorporate property additions to the Tier I Table for property determined by the committee to consistently be used as 100% pollution control in each application submitted for such property between 2014 and 2018 to the Chapter 17 Tax Relief for Pollution Control Property Program. The committee evaluated the Tier II and Tier III applications that received PUDs as part of the triennial review required by Texas Tax Code, §11.31(l) for Chapter 17 and determined that 11 types of pollution control property currently submitted as Tier II property should instead be considered Tier I property in the Tier I Table and no longer require a Tier II application. Under Chapter 18, an application submitted for a PUD for property not on the Tier I Table in §18.25(a) would be submitted as a Tier II application consistent with §18.26, requiring the applicant to propose a reasonable method for calculating a partial determination.

Because Chapter 18 is not in the committee's scope of review, it did not consider the ERL in Texas Tax Code, §26.045(f), codified in §18.26, or the Tier I Table in §18.25(a). Both Chapter 18 tables are identical to the ERL in §17.17(a) and the Tier I Table in §17.14(a), respectively. The committee did not recommend any changes for the ERL in §17.17(a). However, the com-

mission proposes changes to the ERL in §17.17(a) to establish consistency with the HRSG description proposed in the Tier I Table in §17.14(a); therefore, these same changes are proposed to the ERL in §18.26. In the associated rule project for Chapter 17, several changes are also proposed to the Tier I Table in §17.14(a) based on the committee's recommendations; therefore, the commission proposes corresponding changes to the Tier I Table in §18.25(a). The proposed changes would afford applicants applying under the Chapter 18 rules the same opportunities to receive PUDs for property proposed to be submitted as Tier I property as applicants applying under the Chapter 17 rules.

In addition, the commission proposes amendments, as necessary, that were not specifically recommended by the committee but that remain consistent with its advice and to accommodate the addition of HRSGs to the Tier I Table. Non-substantive revisions are proposed to the sections open to address Chapter 18 Tier I Table and associated changes.

The TCEQ is required to review, and update as necessary, the items in the Tier I Table in §18.25(a) every three years per §18.25(b). Likewise, the TCEQ is required to review, and update as necessary, the items in the ERL in §18.26 every three years per Texas Tax Code, §26.045(g). This rulemaking would fulfill the requirements for the commission to review, and update as necessary, the property included on the ERL and Tier I Table in Chapter 18 at least once every three years.

Section by Section Discussion

The commission proposes to amend the title of Chapter 18 from "Rollback Relief for Pollution Control Requirements" to "Voter-Approval Tax Rate Relief for Pollution Control Requirements" to implement SB 2, Section 44. Aside from the revision to change the title of Chapter 18, as required by SB 2, Section 44, the proposed revisions to Chapter 18 are consistent with those for Chapter 17 in the associated rulemaking. Those revisions are proposed based on the recommendations from the committee, except where explicitly discussed. This proposed rulemaking adds specific pollution control property to the Tier I Table in §18.25(a). Under the current rules, §18.25(a) requires applicants to submit a Tier II application for any of the proposed property additions if the property is used for pollution control purposes at a percentage different than what is listed on the table or, at the request of the executive director, if the equipment is not being used in a standard manner. These existing criteria in §18.25(a) are not proposed for revision. Any of the property proposed for inclusion in the Tier I Table would need to continue to adhere to these existing requirements.

§18.25, Tier I Eligible Equipment

The proposed changes to §18.25 include amending the rule language to allow items listed on the Tier I Table located in §18.25(a) with partial use percentages to be eligible for a Tier I application and to add additional property to the Tier I Table. Each property item in the Tier I Table currently has a table number, the media, property name, property description, and use percentage. The proposed additions to the Tier I Table also include this same information.

The proposed amendment to §18.25(a) would clarify that a Tier II application is still required if a marketable product is recovered from property listed in the Tier I Table, unless that property is designated with a partial use percentage on the Tier I Table. This revision is necessary because subsection (a) currently directs an applicant to file a Tier II application if a marketable product is

recovered from the property listed in the Tier I Table, without exception. Because HRSGs may generate a marketable product, which was considered during the calculation of the appropriate use percentage and is accounted for in the 65% partial use determination proposed in this rulemaking, the eligibility description is amended to indicate property items listed on the Tier I Table with a partial use percentage may nevertheless be eligible for Tier I applications.

The commission proposes to amend the first sentence of the introductory paragraph to the Tier I Table in §18.25(a) to require a Tier I application for the property listed in the Tier I Table whether it is used wholly or partly for pollution control purposes. The existing requirement in subsection (a) designates that a Tier I application is required for property used wholly, or 100%, as pollution control property. However, the proposed amendment to the Tier I Table includes HRSGs at a partial use percentage of 65%. Therefore, under the proposed rule, Tier I applications for HRSGs would be appropriate. The commission further proposes to add an exception for HRSGs listed as a partial use percentage from the description of the Tier I Table contents. This proposed revision accommodates the addition of HRSGs to the Tier I Table, which currently only contains property used wholly as pollution control. The table would be expanded to include HRSGs as the only piece of property eligible for a Tier I PUD at a partial use percentage. Although all the other property currently listed in the Tier I Table must be used wholly for pollution control property to be eligible for filing as a Tier I application, the commission previously listed property with partial use percentages on the Tier I Table. The property was subsequently removed because the usage of such property could not be definitively verified as representative of standard use based on the information available about the uses of the property at the time. However, for this proposed rulemaking, the committee reviewed current data and determined 65% reasonably represents the proportion of HRSGs used as pollution control when HRSGs are used in a standard manner.

The commission proposes item numbers A-90, A-91, A-116 through A-120, A-190, S-29, M-23 and M-24 for addition to the Tier I Table in §18.25(a), all at 100% pollution control property based on the recommendations of the advisory committee concerning the Tier I Table of Chapter 17. Items A-90, A-91, A-116 through A-120, A-190, and M-23 would be added as the committee recommended. The commission agrees with the committee's recommendations to revise the Tier I Table and add Dry Low-NO_x Emissions Systems; Lean-Burn Portions of Reciprocating Engines; Fixed Storage Tank Roofs; Submerged Fill Pipes; Dual Mechanical Pump Seals; Seal-less Pumps; Airless Paint Spray Guns; and Remote Controlled Block Valves to the Tier I Table because they are used wholly for control purposes. These items are described in the proposed rule language and are not further discussed in the Section by Section Discussion section of this preamble.

For each of the items proposed for addition to the Tier I Table, the committee based its recommendation that this property should be Tier I level property on historical Tier II application submittals, under the Tax Relief for Pollution Control Property Program in Chapter 17, that demonstrated the property was consistently used wholly for pollution control, as discussed in the Background and Summary of Factual Basis for the Proposed Rules section of this preamble. The proposed item numbers would designate air pollution control equipment, indicated by the letter "A," solid waste management pollution control equipment, indicated by the letter "S," and miscellaneous pollution control equipment, indi-

cated by the letter "M," as recommended by the committee in its December 2018 formal majority report. The committee's recommendation to add the property to the Tier I Table was based on its review and analysis of Tier II applications submitted from 2014 through 2018 that consistently received a PUD of 100% each time an applicant requested a use determination for such property. Although the proposed item numbers are added to the Tier I Table at 100% pollution control property, an applicant is still required under §18.25(a) to submit a Tier II application if such property has productive benefit or is not used as described in the table.

The commission proposes to add item number A-92 to the Tier I Table for HRSGs. The proposed property item would be listed as a boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions with a partial use determination of 65%. To arrive at the 65% partial use percentage, the committee evaluated data provided in the 2019 Gas Turbine World Handbook and calculated the average of both the environmental benefit and the productive benefit of a combined-cycle plant operating a HRSG versus a similar simple-cycle plant without a HRSG. For the environmental benefit estimation, the committee considered the best available control technology emission limit for a combined-cycle facility of 2 parts per million (ppm) and for a simple-cycle facility of 5 ppm to determine the decrease in nitrogen oxides emissions between two types of facilities on a pound per megawatt-hour basis. To determine the production benefit, the committee calculated both the average increase in plant output and average improvement in heat rate attributable to combine-cycle operation (due to the HRSG) when compared to simple-cycle operation. The committee averaged the percentage results for the environmental benefit and the nonproductive use to derive an environmental use of 65%.

The commission proposes to amend the Tier I Table in §18.25(a) to add item S-29 for reclamation equipment. The proposed property description excludes commercial reclamation equipment from eligibility as Tier I property. Commercial reclamation equipment is equipment owned and rentable by companies that provide reclamation services. The committee did not identify the explicit exclusion of commercial reclamation equipment in its recommendation. However, the commission proposes this exclusion to clarify that the construction equipment used for commercial land reclamation purposes would not qualify for exemption from taxation because the Voter-Approval Tax Rate Relief for Pollution Control Requirements Program only applies to political subdivisions required to meet the requirements of a TCEQ-issued permit, as specified in §18.5(a). The type of company performing commercial reclamation services would not be expected to meet the specified Chapter 18 applicability.

The commission proposes to amend the Tier I Table in §18.25(a) to add item M-24 for nondestructive pipeline testing to the Tier I Table. The commission proposes a change to the committee's recommended proposed property description to clarify the property that is intended to be eligible, and property that is intended to be ineligible, as Tier I Table property. The committee recommended expenditures such as radiography as the Tier I Table description. Instead, the commission proposes that expenditures used for nondestructive pipeline testing are explicitly included, but expenditures used for non-pollution control purposes are explicitly excluded. The explicit inclusion of nondestructive pipeline testing as part of the proposed property description is necessary to state the item that is intended to be covered as the Tier I property rather than only providing an example of the property, as rec-

ommended by the committee. The explicit exclusion of expenditures for non-pollution control purposes maintains consistency with requirements in §18.5(a) requiring that the pollution control property wholly or partly meet the requirements of a TCEQ-issued permit.

§18.26, Expedited Review List

The commission proposes amendments to the ERL in §18.26 to revise the description for HRSGs, listed as item number B-8. The committee recommended describing a HRSG in the §17.14(a) Tier I Table as a boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions. Although the committee did not recommend any changes to the existing Chapter 17, §17.17(b) ERL, the commission proposes replacing the existing HRSG description in the §18.26 ERL with the committee's recommended HRSG description. This proposed change streamlines the description of HRSG and specifies the property intended to qualify as a HRSG under the Chapter 18 rules. The proposed change to the ERL was not explicitly recommended by the committee but remains consistent with its advice. This proposed amendment to the ERL is not intended to change the type of property currently covered under the Voter-Approval Tax Rate Relief for Pollution Control Requirements Program. The proposed change to the HRSG description in the Chapter 17, §17.17(b) ERL is also proposed to the Chapter 18, §18.26 ERL to uphold consistency between the Chapters 17 and 18 programs.

§18.30, Partial Determinations

The commission proposes to amend §18.30 to add language that clarifies the property for which a partial determination is not required. This revision is necessary in light of the proposed inclusion of HRSGs with a partial use percentage in the §18.25(a) Tier I Table. The proposed language provides an exception for property that is on the Tier I Table located in §18.25(a) at a specified partial use percentage from having to request a partial determination. Existing language directing applicants to apply for a partial determination for property that is in the ERL in §18.26 or that is not wholly used for pollution control remains unchanged. This proposed revision is intended to ensure property already determined to have a partial use environmental benefit listed on the Tier I Table do not have to apply for a partial use determination. This proposed revision does not affect any property other than HRSGs at this time since all other property proposed for inclusion in the Tier I Table is associated with a 100% positive use.

The proposed amendment to §18.30 differs from the proposed change to §17.17(a) because the existing rule language is not the same; however, the intent of both proposed revisions is the same.

Fiscal Note: Costs to State and Local Government

Jené Bearnse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking states that certain Tier II pollution control property should instead be considered Tier I property in the Tier I Table; this removes the requirement for a Tier II application. The rulemaking also adds HRSGs to the Tier I Table. Tier I application fees are less than the Tier II application fees. The application fee for Tier I is \$150; the Tier II application fee is \$500. However, the commission does not expect a significant fiscal impact be-

cause it does not often receive applications under Chapter 18. For example, the commission has only approved four applications since 2008.

Public Benefits and Costs

Ms. Bearnse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with the state law and regulations that require a review of the Tier I Table and ERL every three years. In this review, the commission is proposing changes to the Tier I Table, and to the ERL only for consistency with the Tier I Tables changes. In addition, the public will benefit because portions of this rulemaking will bring the regulations into compliance with the May 3, 2019 rulings by the Texas Supreme Court.

The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require a significant increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact the state's economy positively or negatively.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined the rules do not meet the defini-

tion of a "Major environmental rule." Under Texas Government Code, §2001.0225, a "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking implements a Voter-Approval Tax Rate Relief for Pollution Control Requirements Program as described in Texas Tax Code, §26.045 and the Background and Summary of the Factual Basis for the Proposed Rules and Section by Section Discussion sections of this preamble. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax rate adjustment program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. This proposed rulemaking would not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action creates a program which is available only to political subdivisions as described in Texas Tax Code, §26.045 and the Section by Section Discussion sections of this preamble. Promulgation and enforcement of these proposed rules will be neither a statutory nor constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-031-018-AI. The comment period closes on August 31, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Elizabeth Sartain, Air Quality Planning Section, at (512) 239-3933.

Statutory Authority

The amended sections are proposed under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers; and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amended sections are also proposed under Texas Tax Code, §26.045, which authorizes that the voter-approval tax rate for a political subdivision of this state be increased by the rate that, if applied to the total current value, would impose an amount of taxes equal to the amount the political subdivision will spend out of its maintenance and operation funds under Texas Tax Code, §26.012(16) to pay for a facility, device, or method for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the commission.

The amended sections are proposed to implement Texas Tax Code, §26.045.

§18.25. Tier I Eligible Equipment.

(a) For the property listed on the Tier I Table located in this subsection that is used wholly for pollution control purposes, a Tier I application is required. A Tier I application must not include any property that is not listed in this subsection or that is used for pollution control purposes at a use percentage that is different than what is listed in the table in this subsection. Unless otherwise designated with a partial use percentage in the Tier I Table of this subsection, if [H] a marketable product is recovered (not including materials that are disposed) from property listed in this subsection, a Tier II application is required.

Figure: 30 TAC §18.25(a)

[Figure: 30 TAC §18.25(a)]

(b) The commission shall review and update the Tier I Table in subsection (a) of this section at least once every three years.

(1) An item may be added to the list only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

(2) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

§18.26. Expedited Review List.

The Expedited Review List in this section is a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. This table consists of the list located in Texas Tax Code, §26.045(f) with changes as authorized by Texas Tax Code, §26.045(g). The commission shall review and add to the items listed in this table

only if there is compelling evidence to support the conclusion that the item provide pollution control benefits. The commission may remove an item from this table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. Figure: 30 TAC §18.26 [Figure: 30 TAC §18.26]

§18.30. *Partial Determinations.*

A partial determination must be requested for all property that is in the figure in §18.26 of this title (relating to Expedited Review List) or that is not wholly used for pollution control, except for property that is on the Tier I Table located in §18.25(a) of this title (relating to Tier I Eligible Equipment) at a specified partial use percentage. It is the responsibility of the applicant to propose a reasonable method for calculating a partial determination. The calculation must be documented and included with the application. It is the responsibility of the executive director to review the appropriateness of the proposed method and make the final 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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TRD-202002949
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 30, 2020
For further information, please call: (512) 239-2678



CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§30.20, 30.24, 30.33, 30.34, 30.36, 30.81, 30.95, 30.129, and 30.402; and new §30.29.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking would implement House Bill (HB) 1508 from the 85th Texas Legislature, 2017; and HB 1342, Senate Bill (SB) 37, and SB 1217 from the 86th Texas Legislature, 2019.

HB 1508 amended Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction by adding Texas Occupations Code, §53.151 and §53.153. The amendments provide individuals the ability to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction. This rulemaking proposes new §30.29 to outline the requirements for training providers, eligibility for reimbursement, and procedures for requesting reimbursement.

HB 1342 amended Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction, particularly Texas Occupations Code, §§53.021(a), 53.022, 53.023(a) and (b), 53.051, and 53.0231. Based on HB 1342, a licensing authority may no longer suspend or revoke a license, disqualify an individual from receiving a license, or deny an individual the opportunity to take a licensing examination based on the individual's conviction of an offense that does not directly related to the duties and responsi-

bilities of the licensed occupation and that was committed less than five years before the date the individual applied for the license. HB 1342 also requires a licensing authority to notify the individual in writing if the licensing authority intends to deny them a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense. The notice shall include the reason for the intended denial and allow the individual a chance to submit any relevant information for further consideration by the authority.

SB 37 amended Texas Occupations Code, Chapter 56, Disciplinary Action Against Recipients of Student Financial Assistance Prohibited, particularly Texas Occupations Code, §56.003. The amendment removed language that allowed licensing agencies to deny or take other disciplinary action against license holders or potential license holders who are in default of their student loans.

SB 1217 added Texas Occupations Code, Chapter 53, Consequences of Criminal Convictions, §53.0231. The new section prohibits a licensing authority to consider an arrest that did not result in the individual's conviction or placement on deferred adjudication community supervision in the denial of a new or renewal license. The agency already complies with intent of SB 1217 by not considering dismissals that did not result in a conviction or deferred adjudication. Therefore, only language based on SB 1217 is proposed to clarify the intent.

Section by Section Discussion

Administrative Amendments

The commission proposes administrative amendments to multiple sections of Chapter 30. The proposed rulemaking includes various stylistic, non-substantive amendments to update rule language to current *Texas Register* style and format requirements and to correct section references in Chapter 30 to other chapters. Administrative amendments are proposed to ensure the consistency, clarity, and accuracy of the information within Chapter 30 (i.e., §30.402). The proposed administrative amendments include but are not limited to: correcting minor grammatical, spelling, and typographical errors; standardizing the use of acronyms; and updating section references.

§30.20, Examinations

The commission proposes to amend §30.20(k) to remove paragraph (2) to reflect statutory changes to Texas Occupations Code, §53.0231, Limitation Regarding Consideration of Certain Arrests. The subsequent paragraphs would be re-numbered accordingly. The proposed amendment would remove the individual's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applied for the license as grounds on which a licensing authority may suspend or revoke a license or disqualify an individual from receiving a license. This proposal would implement HB 1342.

The commission proposes §30.20(n) to clarify that the commission may not deny an individual the opportunity to take a licensing exam based on the individual's prior conviction of an offense unless the commission follows the notice requirements of §30.36. This proposal would implement HB 1342.

§30.24, License and Registration Applications for Renewal

The commission proposes §30.24(t) to clarify that the commission may not deny an individual the opportunity to renew a li-

cense based on the individual's prior conviction of an offense unless the commission follows the notice requirements of §30.36. This proposal would implement HB 1342.

§30.29, Notification Requirements for Training Providers of Initial Training

The commission proposes new §30.29 to reflect changes to the Texas Occupations Code, §53.152. Proposed §30.29 would require all entities that provide educational or instructional programs that prepare a student for an occupation or vocation that requires a Texas occupational license to inform the student or program participant that their eligibility for an occupational license could be impacted by the student's criminal history. Proposed §30.29 would also provide individuals the ability to petition the agency to seek reimbursement from a training provider if they were not notified and were subsequently denied the license due to a criminal conviction. Requiring training providers to notify students of their potential ineligibility prevents former offenders from spending unnecessary time and resources on training and educational courses that may not yield a professional pathway for employment. This proposal would implement HB 1508.

Proposed new §30.29(a) would define "Initial training," "Student," and "Training provider" for the purpose of §30.29.

Proposed new §30.29(b) would outline the notification requirements for the training provider. The training provider is required to notify its students that an individual may be ineligible for an occupational license based on their criminal conviction history, the current guidelines, the circumstances under which the executive directory may consider an individual's conviction in the denial of a license, and that the student may request a criminal history evaluation from the agency.

Proposed new §30.29(c) would require each student to sign an acknowledgment that the trainer notified the student as outlined in §30.29(b).

Proposed new §30.29(d) would require the trainer to retain records of the signed acknowledgment.

Proposed new §30.29(e) would allow a student to request the commission to order the training provider to reimburse the student if the student was denied an initial occupational license due to the student's criminal conviction history and the training provider did not provide the notification required in §30.29(b). The student may request reimbursement for the tuition paid to the training provider and the amount of any application or examination fees the student may have paid. This will benefit the student by recovering any unnecessary investments made to obtain a license and by holding the training provider accountable for failing to meet the notification requirement.

Proposed §30.29(f) - (j) would outline the process for a student to pursue reimbursement. The proposed subsections would require a student seeking a refund to submit a written request and supporting documentation to the agency and at the same time allow the training provider to file an objection and provide documentation that they had met the notification requirements and are not liable to refund any fees.

§30.33, License or Registration Denial, Warning, Suspension, or Revocation

The commission proposes to delete §30.33(a)(2)(G) to reflect changes to Texas Occupations Code, Chapter 56, Disciplinary Action Against Recipients of Student Financial Assistance Prohibited and Chapter 57, Requirements for Licensing Agencies.

This proposed amendment eliminates the agency's authority to deny, revoke, suspend, or fail to renew a professional license due to the licensee or applicant being in default on a student loan. License holders who are in default on their student loan repayment would no longer be at risk of losing their occupational license or facing other disciplinary action in the event they are unable to pay back their student loans. This proposal would implement SB 37.

The commission proposes to delete §30.33(h)(1)(B) to reflect changes to Texas Occupations Code, §53.0231. The subsequent subparagraphs would be re-lettered accordingly. Based on the amendment, the commission may not deny an individual the opportunity to take a licensing examination based on the individual's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license. This proposal would implement HB 1342.

The commission proposes §30.33(k) to clarify that the commission may not deny an initial license or renewal based on the individual's prior conviction of an offense unless the commission follows the notice requirements of §30.36. This proposal would implement HB 1342.

§30.34, Factors in Determining Whether Conviction Relates to Occupation

The commission proposes amendments to §30.34 to reflect changes to Texas Occupations Code, §53.022, Factors in Determining Whether Conviction Relates to Occupation.

The commission proposes to amend the title of §30.34 to add the words "Directly" and "Licensed." This will help clarify that the factors used are to determine whether a criminal conviction is "directly" related to the duties and responsibilities of the "licensed" occupation. Additionally, the commission proposes the articles "a" and "the" in the title for clarity purposes. This proposal would implement HB 1342.

The commission proposes to amend §30.34(a) to reflect changes to Texas Occupations Code, §53.022. The proposed amendment would specify that the criminal conviction must directly relate to the duties and responsibilities of a licensed occupation and removes the relationship of the crime to the "fitness" required to perform the duties of the licensed occupation as a factor in determining whether a criminal conviction relates to the duties and responsibilities of a licensed occupation. This proposal would implement HB 1342.

The commission proposes §30.34(a)(5) to require the commission to consider any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation in determining whether a criminal conviction directly relates to the occupation. This proposal would implement HB 1342.

The commission proposes §30.34(b)(6) to require the commission to consider an individual's compliance with any conditions of community supervision, parole, or mandatory supervision in considering if a criminal conviction directly relates to the duties and responsibilities of the licensed occupation. The subsequent paragraphs would be re-numbered accordingly. This proposal would implement HB 1342.

The commission proposes to amend re-numbered §30.34(b)(7) to remove the more prescriptive requirement that other evidence of an individual's fitness may only include letters of recommendation from specific entities or individuals. This proposed amend-

ment would provide applicants more flexibility to provide recommendations from sources other than those previously specified in the rule. This proposal would implement HB 1342.

The commission proposes to delete §30.34(d). The applicant is no longer required to submit proof that the applicant has maintained a record of steady employment and good conduct. This proposal would implement HB 1342.

While the agency has never considered straight dismissals as part of a criminal history evaluation screening, the commission proposes §30.34(d) to specifically prohibit the use of an arrest that did not result in the individual's conviction or placement on deferred adjudication community supervision in the commission's determination of whether a criminal conviction directly relates to the licensed occupation. As false arrests may happen, this proposed amendment would clarify that arrests that end up being quickly dismissed are not considered as part of a criminal history review. This proposal would implement SB 1217.

§30.36, Notice

The commission proposes to amend §30.36 to reflect changes to Texas Occupations Code, §53.051, Factors in Determining Whether Conviction Directly Relates to Occupation and new §53.023, Additional Factors for Licensing Authority to Consider After Determining the Conviction Directly Relates to the Occupation. The proposed amendment to §30.36 would require the commission to send two notifications, the notice of intent to deny and the final decision to deny, to an individual if the commission decides to proceed with suspension or revocation of a license or deny the opportunity to be examined for a license because of the individual's criminal history. The amendment would also allow the individual up to 30 days to submit any relevant information to the agency for further consideration in response to the notice of intent to deny. The proposal would implement HB 1342.

Proposed §30.36(a)(1) would require that the notice of intent to deny include any factors that were used to determine whether the conviction directly relates to the occupation and list any additional factors the licensing authority considered to determine that the conviction directly relates to the occupation that served as the basis for the suspension, revocation, denial, or disqualification.

Proposed §30.36(a)(2) would require that the notice of intent to deny, suspend, or revoke must notify the applicant or licensee that it is the individual's responsibility to obtain and provide the agency with any additional supporting information documenting sufficient rehabilitative efforts for further consideration by the agency in the denial process.

Proposed §30.36(a)(3) would allow the individual up to 30 days to submit any relevant information to the agency for further consideration.

Proposed §30.36(b) would require the executive director to notify the individual in writing of the final decision to suspend or revoke a license or deny the individual a license or the opportunity to be examined for the license.

Proposed §30.36(b)(1) would require the notification to state that the individual is disqualified from receiving the license or being examined for the license because of the individual's prior conviction of an offense specified in the notice of intent and must include any factors considered under §30.34 that served as the basis for the suspension, revocation, denial, or disqualification.

Proposed §30.36(b)(2) would require the final notice to suspend or revoke a license to notify the individual of the review procedure provided by §30.35 (Guidelines). Section 30.36(b)(2) would replace existing §30.36(2).

Proposed §30.36(b)(3) would require the final notice to suspend or revoke a license to include the earliest date that the individual may appeal the action of the commission. Section 30.36(b)(3) would replace existing §30.36(3).

§30.81, Purpose and Applicability

The commission proposes to amend §30.81(d) to remove language that specifically refers to the Texas Board of Plumbing Examiners in reference to the Texas Occupations Code chapter governing plumbing licenses. This is to prevent the need to revise the rules should any changes be made to the agency designated to administer Texas Occupations Code, Chapter 1301 during a future legislative session.

§30.95, Exemptions

The commission proposes to amend §30.95 to address language that specifically references the Texas State Board of Plumbing Examiners. The proposed changes would remove specific references to the Texas State Board of Plumbing Examiners and replace them with more generic language to avoid needing to amend the rules should the licensing of plumbers move from the Texas Board of Plumbing Examiners to an alternate agency in a future legislative session.

§30.129, Exemptions

The commission proposes to amend §30.129(a)(1) to address language that specifically references the Texas State Board of Plumbing Examiners. The proposed changes would remove specific references to the Texas State Board of Plumbing Examiners and replace them with more generic language to avoid needing to amend the rules should the licensing of plumbers move from the Texas State Board of Plumbing Examiners to an alternate agency in a future legislative session.

Fiscal Note: Costs to State and Local Government

Jené Bearse, analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency.

This rulemaking addresses necessary changes in order to implement new laws affecting Chapter 30. Specifically, TCEQ may no longer suspend or revoke a license, disqualify an individual from receiving a license, or deny the opportunity to take a licensing exam based on a previous conviction that is not directly related to the duties of a licensee and was committed less than five years before the application date. This could potentially increase the number of applicants and the costs associated with processing the applications. However, at this time, the costs are not anticipated to be significant.

No fiscal implications are anticipated for units of local government as a result of administration or enforcement of the proposed rules.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law. The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does expand an existing regulation to allow certain individuals to take licensing exams when they were previously disqualified, and this may increase the number of individuals subject to the regulation's applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to that statute because the proposed rules do not meet the criteria for a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The purpose of the proposed rules is to implement HB 1508 (85th Texas Legislature) and HB 1342, SB 37, 1200, and 1217 (86th Texas Legislature).

The specific intent of the proposed rules is: to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to remove language giving the agency authority to suspend or revoke a license, disqualify

an individual from receiving a license, or deny an individual the opportunity to take a licensing examination based on the individual's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license; to address the agency's procedure for providing written notice to individuals for whom the agency intends to deny a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense; to address the procedure for individuals to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction; and to remove language allowing the agency to deny or take other disciplinary action against license holders or potential license holders who are in default of their student loans.

The proposed rules would clarify and update the agency's licensing and registration programs and would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the proposed rules would only modify existing licensing and registration requirements. Therefore, the proposed rules do not meet the definition of a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3).

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicability requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to rules proposed by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these requirements: there are no federal standards for the occupational licenses and registrations program administered by the commission; the rules do not exceed an express requirement of state law; there is no delegation agreement that would be exceeded by the rules; and the proposed rules would implement requirements of HB 1508 (85th Texas Legislature), and HB 1342, SB 37, and SB 1217 (86th Texas Legislature).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of these proposed rules is: to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to remove language giving the agency authority to suspend or revoke a license, disqualify an individual from receiving a license, or deny an individual the opportunity to take a licensing examination based

on the individual's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license; to address the agency's procedure for providing written notice to individuals for whom the agency intends to deny a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense; to address the procedure for individuals to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction; and to remove language allowing the agency to deny or take other disciplinary action against license holders or potential license holders who are in default of their student loans.

The proposed regulations do not affect a landowner's rights in private real property because this proposed rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules do not constitute a taking because they would not burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2018-024-030-WS. The comment period closes on August 31, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Rebecca Moore, Registration and Reporting Section, (512) 239-2463.

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

30 TAC §§30.20, 30.24, 30.29, 30.33, 30.34, 30.36

Statutory Authority

The amended and new sections are proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to

carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations; Texas Occupations Code, §53.021, concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to revoke, suspend, or deny a license to a person who has been convicted of certain offenses; Texas Occupations Code, §53.022, concerning Factors in Determining Whether Conviction Directly Relates to Occupation, which provides the factors the commission shall consider in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation; Texas Occupations Code, §53.023, concerning Additional Factors for Licensing Authority to Consider After Determining Conviction Directly Relates to Occupation, which provides additional factors the commission shall consider if it determines that an individual's criminal conviction directly relates to the duties and responsibilities of a licensed occupation; Texas Occupations Code, §53.0231, concerning Notice of Pending Denial of License, which provides the procedure for the commission's written notice to individuals for whom the commission intends to deny a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense; Texas Occupations Code, §53.051, concerning Notice, which requires the commission to provide to an individual written notice of the reason for suspension, revocation, denial, or disqualification of a license based on the individual's prior criminal conviction; Texas Occupations Code, §53.152, concerning Notice by Entities Providing Educational Programs, which gives individuals the right to petition the commission to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction; and Texas Occupations Code, §53.153, concerning Refund and Ordered Payments, which requires the commission to order a training provider to reimburse individuals the amount of application and examination fees to the commission if the commission determines a training provider did not notify individuals that they may be ineligible for an initial occupational license due to criminal history and individuals were subsequently denied the license due to a criminal conviction.

The proposed amended and new sections implement House Bill (HB) 1508, 85th Texas Legislature, 2017, which added Texas Occupations Code, §§53.151, 53.152, and 53.153; HB 1342, 86th Texas Legislature, 2019, which amended Texas Occupations Code, §§51.355, 53.021(a), 53.022, 53.023, 53.051, and 53.104(b) and added Texas Occupations Code, §51.357, 51.358, 51.4041(a-1), 53.003, 53.0231, and 53.026; Senate Bill (SB) 37, 86th Texas Legislature, 2019, which amended Texas Occupations Code, Chapter 56, Texas Finance Code, §157.015(f) and (g) and §180.055(d), and Texas Government Code, §466.155(a) and (g); and SB 1217, 86th Texas Legislature, 2019, which added Texas Occupations Code, §53.0231.

§30.20. *Examinations.*

(a) The executive director shall prescribe the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to the particular license. The contents of any examination required for licensure under this chapter are confidential and examinees may not share them with anyone.

(b) Examinations shall be graded and the results forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination is 70%.

(c) An individual with an approved application who fails an examination may not repeat an examination until receiving notification of examination results for that particular examination.

(d) The application becomes void either after 365 days from date of application or failing the same examination four times, whichever occurs first. If an application becomes void, a new fee and a new application must be submitted before the applicant may take the same examination again.

(e) Any scores for repeat examinations taken after an application becomes void will not be applied to the issuance of the license.

(f) Any qualified applicant with a physical, mental, or developmental disability may request reasonable accommodations to take an examination.

(g) Examinations shall be given at places and times approved by the executive director.

(h) Examinees must comply with all written and verbal instructions of the proctor and shall not:

(1) bring any unauthorized written material, in either printed or electronic formats, into the examination room;

(2) bring any electronic devices, including any device with a camera, into the examination room;

(3) share, copy, or in any way reproduce any part of the examination;

(4) engage in any deceptive or fraudulent act; or

(5) solicit, encourage, direct, assist, or aid another person to violate any provision of this section or compromise the confidentiality of the examination.

(i) The executive director shall provide an analysis of an examination when requested in writing by the applicant. The executive director shall ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.

(j) An individual who wishes to observe a religious holy day on which the individual's religious beliefs prevent the individual from taking an examination scheduled by the agency on that religious holy day shall be allowed to take the examination on an alternate date.

(k) The executive director may deny an individual the opportunity to take a licensing examination on the grounds that the individual has been convicted of an offense, other than an offense punishable as a Class C misdemeanor, that:

(1) directly relates to the duties and responsibilities of the licensed occupation;

~~{(2) does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;}~~

(2) ~~[(3)]~~ is an offense listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or

~~(3) [(4)]~~ is a sexually violent offense, as defined by Texas Code of Criminal Procedure, Article 62.001.

(l) The executive director may deny an individual the opportunity to take a licensing examination on the grounds that:

(1) the individual was charged with:

(A) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(ii) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(2) after consideration of the factors described by Texas Occupations Code, §§53.021(d), 53.022, and 53.023(a), the executive director determines that:

(A) the individual may pose a continued threat to public safety; or

(B) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(m) After notice and opportunity for a hearing, the commission may deny or revoke any license or registration held by a person who violates any of the provisions of this section. The commission may file a criminal complaint against any individual who removes or attempts to remove any portion of the examination, reproduces without permission any part of the examination, or who engages in any fraudulent act relating to the examination process.

(n) The commission shall follow the notification requirements in §30.36 of this title (relating to Notice) prior to denying an individual the opportunity to take a licensing examination based on the individual's prior conviction of an offense.

§30.24. *License and Registration Applications for Renewal.*

(a) A license or registration may not be renewed if it has been:

(1) expired for more than 30 days and an application has not been received by the executive director or postmarked within 30 days after the expiration date of the license or registration;

(2) revoked; or

(3) replaced by a higher class of license.

(b) Applications for renewal must be made on a standard form provided by the executive director.

(1) The executive director shall mail a renewal notification at least 60 days before the license or registration expires to the most recent address provided to the executive director. If a person does not receive a renewal notification, the person is not relieved of the responsibility to timely submit a renewal application.

(2) The person is responsible for ensuring that the completed renewal application, the renewal fee, and other required information are submitted to the executive director by the expiration date of the license or registration.

(c) All statements, qualifications, and attachments provided by the applicant that relate to a renewal application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(d) Approved training to renew a license must be successfully completed after the issuance date and before the expiration date of the current license. Any training credits completed in excess of the amount required for the renewal period shall not be carried over to the next renewal period.

(e) An individual who holds a license prescribed by Texas Water Code, §26.0301, or Texas Health and Safety Code, §341.033 or §341.034, specifically the holder of a Class A or Class B public water system operator or Class A or B wastewater treatment facility operator license may certify compliance with continuing education requirements prior to or at the time the license is renewed by submitting a continuing education certification form available from the executive director.

(f) The executive director may renew a license or registration if the application is received by the executive director or is postmarked within 30 days after the expiration date of the license or registration, and the person meets the requirements for renewal by the expiration date of the license or registration and pays all appropriate fees. This subsection does not extend the validity period of the license or registration nor grant the person authorization to perform duties requiring a license or registration. This subsection only allows an additional 30 days after the expiration of the license or registration for the person to submit the renewal application, any supporting documentation, and appropriate fees.

(g) An individual whose license renewal application is not received by the executive director or is not postmarked within 30 days after the license expiration date may not renew the license and must meet the current education, training, and experience requirements, submit a new application with the appropriate fee, and pass the examination. A person whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the expiration date may not renew the registration and must submit a new application with the appropriate fee and meet all applicable requirements for a new registration.

(h) Persons failing to renew their license or registration in a timely manner due to serving as a military service member may renew their license within two years of returning from active duty by submitting the following:

- (1) a completed renewal application;
- (2) a copy of the military orders substantiating the military service during the time the license expired; and
- (3) the applicable license renewal fee.

(i) For good cause the executive director may extend the two years period for a military service member seeking to renew their license. Good cause may include, but is not limited to, hospitalization or injury to the licensee.

(j) Completion of the required continuing education will be waived for the renewal cycle for military service members outside of this state who were unable to complete the requirements.

(k) These procedures apply only to military service members who are outside this state and not to military contractors.

(l) All licensees must notify the executive director of any change in the previously submitted application information within ten days from the date the change occurs.

(m) All registration holders must notify the executive director of any change in the previously submitted application information within ten days after the month in which the change occurs.

(n) Licenses and registrations that have renewal cycles in transition shall follow the renewal requirements in the applicable subchapter.

(o) The executive director shall determine whether an applicant meets the renewal requirements of this subchapter. If all requirements have been met, the executive director shall renew the license or registration.

(p) The license or registration shall be valid for the term specified.

(q) If the application does not meet the requirements, the executive director shall notify the applicant in writing of the deficiencies.

(r) All deficiencies must be corrected within 30 days of date printed on the notification, or the renewal application shall be considered void after the license expiration date.

(s) A person whose license or registration has expired shall not engage in activities that require a license or registration until the license or registration is renewed or a new license or registration has been obtained.

(t) The commission shall follow the notification requirements in §30.36 of this title (relating to Notice) prior to denying an individual the opportunity to renew a license based on the individual's prior conviction of an offense.

§30.29. Notification Requirements for Training Providers of Initial Training.

(a) Definitions. The following terms, when used in this section, shall have the following meaning:

(1) Initial training--Training, required by rule, to obtain an initial occupational license identified in Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, Irrigation Technicians and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; Public Water System Operators and Operations Companies; Visible Emissions Evaluator Training and Certification).

(2) Student--An individual who is enrolled in an educational or instructional program that prepares the individual for an initial occupational license.

(3) Training provider--An administrative entity or individual that provides initial training.

(b) A training provider shall notify its students of:

(1) the potential ineligibility of an individual who has been convicted of an offense for issuance of an occupational license by the executive director upon completion by the individual of the initial training;

(2) the current guidelines adopted by the executive director;

(3) the circumstances described in §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation) under which the executive director may consider an individual to have been convicted of an offense, regardless of whether the proceedings were dismissed and the individual was discharged, for the purpose of denying, suspending, or revoking the license; and

(4) the right of an individual to request a criminal history evaluation letter from the agency under Texas Occupations Code, §53.102 as described in §30.13 of this title (relating to Eligibility of Certain Applicants for Occupational Licenses or Registrations).

(c) A training provider shall require each student to sign an acknowledgement that the training provider notified the student of the information described in subsection (b) of this section. This acknowledgement may be provided in an electronic form.

(d) A training provider shall retain records of the signed acknowledgment described in subsection (c) of this section for at least five years after the student confirms receipt of the information described in subsection (b) of this section.

(e) If the student's application for an initial occupational license is denied due to the student's criminal conviction history, and the training provider failed to provide the student the information described in subsection (b) of this section, the student may request that the commission order the training provider to:

(1) refund the student the amount of tuition paid to the training provider; and

(2) pay the student an amount equal to the total of:

(A) the amount of any application fees paid by the student to the agency for the occupational license which the student was denied due to the student's conviction criminal history; and

(B) the amount of any examination fees paid by the student to the agency or an examination provider approved by the executive director for the occupational license which the student was denied due to the student's criminal conviction history.

(f) To be eligible for reimbursement pursuant to subsection (e) of this section, the student must submit a written request for recovery of costs to the Office of the Chief Clerk, Texas Commission on Environmental Quality, Mail Code, 105, P.O. Box 13087, Austin, Texas 78711-3087 and the training provider within:

(1) 60 days after the date the executive director mails the final notice of denial of the student's application for an initial occupational license; or

(2) if the final decision is contested, within 30 days of the final commission decision to deny the license, whichever is later.

(g) A student seeking reimbursement pursuant to subsection (e) of this section must provide documentation of the amount of tuition, application fees, and examination fees that were incurred by the student.

(h) A training provider may file a response to a student's request for reimbursement with the chief clerk within 30 days after the delivery of the student's written request for reimbursement.

(i) After the deadline for the training provider to file a response to a student's request, the commission may consider the student's request at a commission meeting.

(j) The chief clerk shall mail notice to the student, training provider, executive director, and public interest counsel at least 30 days before the first meeting at which the commission considers the student's request for reimbursement.

§30.33. License or Registration Denial, Warning, Suspension, or Revocation.

(a) The executive director may deny an initial or renewal application for the following reasons.

(1) Insufficiency. The executive director shall notify the applicant of the executive director's intent to deny the application and advise the applicant of the opportunity to file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The executive director may determine that an application is insufficient for the following reasons:

(A) failing to meet the licensing or registration requirements of this chapter; or

(B) if an out-of-state licensing program does not have requirements substantially equivalent to those of this chapter.

(2) Cause. After notice and opportunity for a hearing, the commission may deny an application for a license or registration by an applicant who:

(A) provides fraudulent information or falsifies the application;

(B) has engaged in fraud or deceit in obtaining or applying for a license or registration;

(C) has demonstrated gross negligence, incompetence, or misconduct in the performance of activities authorized by a license or registration;

(D) made an intentional misstatement or misrepresentation of fact or information required to be maintained or submitted to the commission by the applicant or by the license or registration holder;

(E) failed to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute; or

(F) at the time the application is submitted, is indebted to the state for a fee, penalty, or tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute. [; or]

~~[(G) is in default on loans guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC) (the executive director shall proceed as described in Texas Education Code, Chapter 57) if identified by TGSLC and the application is for a renewal license or registration.]~~

(b) If an individual causes, contributes to, or allows a violation of this chapter, the executive director may issue a warning letter. The letter shall be placed in the individual's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the individual may be grounds for suspension, revocation, enforcement action, or some combination. A warning is not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(c) After notice and hearing, the commission may suspend or revoke a license, certificate, or registration on any of the grounds contained in Texas Water Code, §7.303(b).

(d) After notice and hearing a license or registration may be suspended for a period of up to one year, depending upon the seriousness of the violations. A license or registration shall be revoked after notice and hearing upon a second suspension.

(e) The commission may revoke a license or registration after notice and hearing for a designated term or permanently. If a license or registration is revoked a second time, the revocation shall be permanent.

(f) The following procedures for renewal apply to individuals that have had their license or registration suspended.

(1) If a license or registration expiration date falls within the suspension period, an individual may renew the license or registration during the suspension period according to §30.24 of this title (relating to License and Registration Applications for Renewal) and the applicable subchapters of this chapter.

(2) A license or registration suspended in accordance with subsection (j) of this section may not be renewed during the suspension period. The license or registration may only be renewed if the court or the Title IV-D agency renders an order vacating or staying an order suspending the license or registration and the license or registration has not expired during the suspension period.

(3) After the suspension period has ended, the license or registration shall be automatically reinstated unless the individual failed to renew the license or registration during the suspension period.

(g) Individuals that have had their license or registration revoked shall not have their license or registration reinstated after the revocation period. After the revocation period has ended, an individual may apply for a new license or registration according to this chapter.

(h) Criminal Conviction.

(1) After notice and hearing, the commission may deny, suspend, or revoke a license on the grounds that the individual has been convicted of an offense, other than a Class C misdemeanor that:

(A) directly relates to the duties and responsibilities of the licensed occupation;

~~(B) does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;}~~

~~(B) [(C)] is listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or~~

~~(C) [(D)] is a sexually violent offense, as defined by Texas Code of Criminal Procedure, Article 62.001.~~

(2) The commission shall revoke the license or registration upon an individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(3) Prohibited Employment.

(A) Individuals subject to registration under the Texas Code of Criminal Procedure, Chapter 62 because of a reportable conviction or adjudication for which an affirmative finding is entered under Texas Code of Criminal Procedure, Article 42.015(b) or Section 5(e)(2), Article 45.12, and licensed after September 1, 2013, may not, for compensation, provide or offer to provide any type of service in the residence of another person unless the provision of service will be supervised.

(B) For purposes of this subsection:

(i) "Residence" means a structure primarily used as a permanent dwelling and land that is contiguous to that permanent dwelling.

(ii) "Supervision" means direct, continuous visual observation of the individual at all times.

(4) Except as provided by paragraph (5) of this subsection, notwithstanding any other law, the executive director may not consider an individual to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:

(A) the individual entered a plea of guilty or *nolo contendere*;

(B) the judge deferred further proceedings without entering an adjudication of guilt and placed the individual under the supervision of the court or an officer under the supervision of the court; and

(C) at the end of the period of supervision, the judge dismissed the proceedings and discharged the individual.

(5) The executive director may consider an individual to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the individual was discharged as described by paragraph (4) of this subsection if:

(A) the individual was charged with:

(i) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(ii) an offense other than an offense described by clause (i) of this subparagraph if:

(I) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(II) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(B) after consideration of the factors described by Texas Occupations Code, §53.022 and §53.023(a), the executive director determines that:

(i) the individual may pose a continued threat to public safety; or

(ii) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(i) After notice and hearing, the commission may revoke a maintenance provider registration on any of the grounds in Texas Health and Safety Code, §366.0515(m).

(j) Failure to pay child support.

(1) The commission may suspend a license or registration if a licensed or registered individual has been identified by the Office of the Attorney General as being delinquent on child support payments (upon receipt of a final order suspending a license or registration, the executive director shall proceed as described in Texas Family Code, Chapter 232).

(2) The commission shall refuse to accept an application for:

(A) issuance of a new license or registration to an individual; or

(B) renewal of an existing license or registration to an individual if:

(i) the individual has failed to pay child support for six months or more;

(ii) the commission is notified by a child support agency, as defined by Texas Family Code, §101.004; and

(iii) the child support agency requests the commission to refuse to accept the application.

(3) The commission shall not accept an application for a license that was refused under paragraph (2) of this subsection until notified by the child support agency that the individual has:

(A) paid all child support arrearages;

(B) made an immediate payment of not less than \$200 toward child support arrearages owed and established with the child support agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(C) been granted an exemption from this subsection as part of a court-supervised plan to improve the individual's earnings and child support payments; or

(D) successfully contested the child support agency's request for the commission's denial of issuance or renewal of the license or registration.

(4) The commission may charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending that license.

(5) For purposes of this subsection, the suspension period for a license or registration shall be until:

(A) the court or the Title IV-D agency renders an order vacating or staying an order suspending the license or registration; or

(B) the expiration of the license or registration.

(k) The commission shall follow the notification requirements in §30.36 of this title (relating to Notice) prior to the denial of an initial license, the revocation of a license, or renewal of a license based on the individual's prior conviction of an offense.

§30.34. Factors in Determining Whether a Conviction Directly Relates to the Licensed Occupation.

(a) In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed [an] occupation, the commission shall consider each of the following factors:

(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 individual previously had been involved; [and]

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

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

(b) If the commission determines under subsection (a) of this section, that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, [In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of an individual who has been convicted of a crime,] the executive director shall consider, in addition to the factors listed in subsection (a) of this section:

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

(2) the age of the individual when the crime was committed;

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

(4) the conduct and work activity of the individual before and after the criminal activity;

(5) evidence of the individual's rehabilitation or rehabilitative effort while incarcerated or after release; [and]

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

(7) [(6)] other evidence of the individual's ability to perform the duties and responsibilities of the occupation [fitness], including letters of recommendation, [from:]

[(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the individual;]

[(B) the sheriff or chief of police in the community where the individual resides; and]

[(C) any other individual in contact with the convicted individual.]

(c) The applicant has the responsibility, to the extent possible, to obtain and provide to the executive director the documentation described [recommendation of the prosecution, law enforcement, and correctional authorities as required] by subsection (b)(7) [(b)(6)] of this section.

(d) In determining whether a criminal conviction directly relates to the licensed occupation, the commission may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision. [In addition to fulfilling the requirements of subsection (a)(2) of this section, the applicant shall furnish proof in the form required by the executive director that the applicant has:]

[(1) maintained a record of steady employment;]

[(2) supported the applicant's dependents;]

[(3) maintained a record of good conduct; and]

[(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.]

§30.36. Notice.

(a) The executive director shall notify the individual in writing of the intent to suspend or revoke a license or deny the individual a license or the opportunity to be examined for a license (notice of intent) because of the individual's prior conviction of an offense [a crime and the relationship of the crime to the license]. The notice of intent [notification] shall [include, but not be limited to the]:

(1) include the reason for the suspension, revocation, denial, or disqualification, including any factor considered under §30.34 of this title (relating to Factors in Determining Whether a Conviction Directly Relates to the Licensed Occupation) that served as the basis for the suspension, revocation, denial, or disqualification;

(2) notify the individual that it is the individual's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in §30.34(b) of this title;

(3) allow the individual 30 days to submit any relevant information to the licensing authority for further consideration.

(b) The executive director shall notify the individual in writing of the final decision to suspend or revoke a license or deny the individual a license or the opportunity to be examined for the license (final notice) because of the individual's prior conviction of the offense(s) specified in the notice of intent. The final notice shall:

(1) include the reason for the suspension, revocation, denial, or disqualification, including any factor considered under §30.34 of this title that served as the basis for the suspension, revocation, denial, or disqualification;

(2) notify the individual of the review procedure provided by §30.35 of this title (relating to Guidelines); and

(3) include the deadline by which [earliest date that] the individual may appeal the action of the commission.

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



SUBCHAPTER C. CUSTOMER SERVICE INSPECTORS

30 TAC §30.81, §30.95

Statutory Authority

The amendments are proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; and TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations.

The proposed amendments implement Texas Occupations Code, §1301.255 and §1301.551.

§30.81. *Purpose and Applicability.*

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to individuals who conduct and certify customer service inspections.

(b) An individual who performs customer service inspections must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(c) An endorsement for customer service inspections shall expire when an individual renews a water operators license or the license expires. To obtain a customer service inspector license, an individual holding an endorsement must submit a new application with the appropriate fee.

(d) A licensed customer service inspector shall not perform plumbing inspections required under Texas Occupations Code, Chapter 1301 [§1301.255 and §1301.551].

§30.95. *Exemptions.*

Plumbing inspectors and water supply protection specialists licensed by a plumbing licensing authority in the state of Texas [the State Board of Plumbing Examiners] are exempt from these requirements.

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. LANDSCAPE IRRIGATORS, IRRIGATION TECHNICIANS AND IRRIGATION INSPECTORS

30 TAC §30.129

Statutory Authority

The amendment is proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; and TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations.

The proposed amendment implements Texas Occupations Code, Chapter 1301.

§30.129. *Exemptions.*

(a) The licensing requirements of this chapter do not apply to a person who:

(1) is licensed by a plumbing licensing authority in the state of Texas [the Texas State Board of Plumbing Examiners] and is working within the scope provided by the plumbing laws;

(2) is registered or licensed as a professional engineer or architect or landscape architect if the work is related to the pursuit of the profession;

(3) is under the direct supervision of a licensed irrigator and assists in the installation, maintenance, alteration, repair, or service of an irrigation system; or

(4) is an owner of a business that employs a licensed irrigator to supervise the business' sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems. For the purpose of this subchapter, employs means steadily, uniformly, or habitually working in an employer-employee relationship with the intent to earn a livelihood, as opposed to working casually or occasionally.

(b) The licensing requirements of this chapter do not apply to:

(1) irrigation or yard sprinkler work that is performed by a property owner in a building or on premises owned or occupied by the owner as the owner's home;

(2) irrigation or yard sprinkler repair work, other than extension of an existing irrigation or yard sprinkler system or installation of a replacement system that is:

(A) performed by a maintenance person who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) incidental to and on premises owned by the business in which the person is regularly employed or engaged;

(3) irrigation or yard sprinkler work that is performed:

(A) by a regular employee of a railroad who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) on the premises or equipment of the railroad;

(4) irrigation and yard sprinkler work that is performed on public property by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state;

(5) irrigation or yard sprinkler work that is performed by a person using a garden hose, hose sprinkler, hose-end product, including soaker hose, or agricultural irrigation system;

(6) an activity that includes a commercial agricultural irrigation system;

(7) irrigation or yard sprinkler work that is performed by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by the individual performing the work;

(8) irrigation or yard sprinkler work that is performed by a member of a property owners' association as defined by Texas Property Code, §202.001, on real property owned by the association or in common by the members of the association if the irrigation or yard sprinkler system water real property that is less than 1/2 acre in size and is used for aesthetic or recreational purposes.

(c) A person who is exempt from the license requirements of this subchapter shall comply with the standards established by Chapter 344 of this title (relating to Landscape Irrigation). The term irrigation system does not include a system used on or by an agricultural operation as defined in Texas Agriculture Code, §251.002.

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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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



SUBCHAPTER K. PUBLIC WATER SYSTEM OPERATORS AND OPERATIONS COMPANIES

30 TAC §30.402

Statutory Authority

The amendment is proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; and TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations.

The amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 37.002, 37.003, 37.005, and 37.006.

§30.402. Exemptions.

(a) An individual who performs process control duties in production or distribution of drinking water for a transient non-community water system as defined in §290.38 [~~§290.38(77)~~] of this title (relating to Definitions), is exempt from the licensing requirements of this subchapter, if the source water for the water system is purchased treated water or groundwater that is not under the direct influence of surface water.

(b) An operator-in-training under the direct supervision of a licensed public water system operator is exempt from the licensing requirements of this subchapter.

(c) A military operator-in-training under the direct supervision of a licensed public water system operator is exempt from the licensing requirements of this subchapter for the purpose of collecting microbiological samples or determining disinfection residuals at military facilities' water distribution systems. The military operator-in-training is not exempt from the licensing requirements of this subchapter for the purpose of performing any other process control duties in the distribution or treatment facilities of a public water system.

(d) An individual who holds a groundwater or surface water license may perform duties relating to the operation and maintenance of drinking water production, purchased water, and water distribution systems and is not required to hold a distribution 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.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3006

The Comptroller of Public Accounts proposes new §9.3006, concerning the notice of estimated taxes required to be delivered by county appraisal districts. The proposed rule implements Senate Bill 2, Section 36, 86th Legislature, 2019. The rule closely follows the language in Tax Code, §26.04(e-2) so as not to create an undue burden on county appraisal districts and to allow them flexibility to create their own notices, as long as they comply with the requirements in Tax Code, §26.04(e-2). The rule refers to proposed model form 50-313 that may be found at <http://www.comptroller.texas.gov/forms/50-313.pdf>.

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

Mr. Currah also has determined that the proposed new rule would have no 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. There would be no anticipated significant economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.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 new section is proposed under Tax Code, §26.04 (Submission of Roll to Governing Body; No-New-Revenue and Voter-

Approval Tax Rates), which requires the comptroller, with advice of the property tax administration advisory board, to adopt rules prescribing the form of the notice required by Tax Code, §26.04(e-2) and, which authorizes the comptroller to adopt rules regarding the format and delivery of the notice.

This new section implements Tax Code, §26.04, Subsections (e-2), (e-3) and (e-4) (Submission of Roll to Governing Body; No-New-Revenue and Voter-Approval Tax Rates).

§9.3006. Notice of Estimated Taxes Required to be Delivered by County Appraisal Districts.

(a) The chief appraiser shall include the following information in a notice of estimated taxes required under Tax Code, §26.04(e-2):

(1) A statement directing the property owner to an Internet website from which the owner may access information related to the actions take or proposed to be taken by each taxing unit in which the property is located that may affect the taxes imposed on the owner's property. The statement must include a heading that is in bold, capital letters in type larger than that used in the other provisions of the notice;

(2) A statement that the property owner may request from the county assessor-collector for the county in which the property is located, or if the county assessor-collector does not assess taxes for the county, the person who assess taxes for the county under Tax Code, §6.24(b), contact information for the assessor for each taxing unit which the property is located who must provide the information described in this subsection to the owner on request; and

(3) The name, address, and telephone number of the county assessor-collector for the county in which the property is located or, if the county assessor-collector does not assess taxes for the county, the person who assesses taxes for the county under Tax Code, §6.24(b).

(b) The chief appraiser may use the comptroller prescribed model form applicable to this section or use a different form that sets out the information listed in subsection (a) of this section.

(c) The chief appraiser of each appraisal district may determine the format and delivery of notice under this section, as long as the format and delivery comply with Tax Code, §26.04(e-2) and (e-3).

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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For further information, please call: (512) 475-2220



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

The Texas Workforce Commission (Agency) proposes amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter A. General Provisions, §815.1

Subchapter B. Benefits, Claims and Appeals, §815.12

Subchapter F. Extended Benefits, §§815.170 - 815.172, 815.174

The Agency proposes the repeal of the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter B. Benefits, Claims, and Appeals, §815.29

Subchapter F. Extended Benefits, §815.173

The Agency proposes the following new subchapter to Chapter 815, relating to Unemployment Insurance:

Subchapter G. CARES Act Provisions, §§815.180 - 815.185

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 815 rule change is to address the requirements of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) as well as to exercise the authority bestowed upon the Agency by Texas Labor Code §209.025.

Federal Funding Under EUISSA

On March 18, 2020, Congress enacted EUISAA, which provides states with emergency funding grants for the administration of their unemployment compensation (UC) programs. The purpose of these grants is to assist states with the unprecedented claim volumes associated with COVID-19.

These grants are allocated into two separate allotments, Allotment I and II. Under EUISAA §4105, if a state meets the requirements of and obtains both Allotment I and II, the Federal Government will pay 100 percent of any Extended Benefits (EB), beginning on March 18, 2020 until December 31, 2020.

One of the requirements of Allotment I under EUISAA §4102(a) is that "the State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment." The US Department of Labor has stated that this notice must be made individually to the separated employee.

The Agency has the authority under Texas Labor Code §208.001(b) to require this individual notice. Texas Labor Code §208.001(b) provides that "The commission shall supply, without cost to each employer, printed notices that provide general information about filing a claim for unemployment benefits. Each employer shall post and maintain the notices in places accessible to the individuals in the employ of the employer." To clarify how this notice must be provided, the Commission has determined it prudent to amend Agency rules to define "places accessible" to include general notice in the workplace and an individual notice upon separation.

Texas Labor Code §209.025 provides that "Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available."

Currently, Texas Labor Code Chapter 209 provides for an Insured Unemployment Rate (IUR) trigger for EB, with benefit el-

igibility lasting a maximum of 13 weeks. Federal law, however, provides for an alternate trigger, the Total Unemployment Rate (TUR) trigger. The TUR trigger also provides that in periods of high unemployment, an additional seven weeks of EB benefit eligibility is available.

In order to maximize the receipt of fully funded federal EB anticipated by Texas Labor Code §209.025, the Agency must implement the optional TUR trigger with the high unemployment rate period. To ensure that the Agency maximizes the federal funding, a provision is being added to allow for additional weeks of benefit eligibility, in excess of the current seven, if provided for by federal law. Other provisions addressing coordination of benefit programs and the treatment of certain governmental and tribal employers are also addressed.

Existing Chapter 815 Subchapter F is explicitly tied to the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111 - 312). Subchapter F is being amended to be generally applicable and effective when full federal funding exists.

Federal Extended Benefit Programs

Subsequently on March 27, 2020 Congress enacted the CARES Act. These provisions provide for new, limited duration, entitlement programs including, Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Federally Reimbursed Waiting Week (FRWW), and Pandemic Unemployment Assistance (PUA). On March 28, 2020, under delegated authority from Texas Governor Greg Abbott, Agency Executive Director Ed Serna executed an agreement with the Secretary of Labor to carry out these provisions of the CARES Act.

FPUC provides an additional \$600 payment on top of other UC payments from the period covering the benefit week ending April 4, 2020, through the benefit week ending July 25, 2020, unless extended. PEUC provides an additional 13 weeks of UC payments to eligible individuals who exhaust their regular compensation benefits and it expires with the benefit week ending December 26, 2020. FRWW will also expire with the benefit week ending December 26, 2020. PUA is a disaster UC program for an individual not eligible for regular compensation, EB, or PEUC, including those who have exhausted other UC programs. PUA currently provides for 39 weeks of benefits, minus regular compensation and EB, and covers individuals not traditionally covered under UC, including independent contractors and the self-employed. PUA also expires with the benefit week ending December 26, 2020.

Under the CARES Act, FPUC, PEUC, and the FRWW require that a claimant, who receives benefits to which the claimant is not entitled, repay those benefits unless the payment was made to the claimant without fault and such repayment would be contrary to equity and good conscience. Current §815.12 contains these waiver and overpayment regulations for the Temporary Emergency Unemployment Compensation (TEUC) program of 2001, and by extension, the Emergency Unemployment Compensation (EUC) program of 2008. However, it does not contain corresponding provisions for the new pandemic programs FPUC, PEUC, and the FRWW.

To remedy this, §815.12 is being amended to be generally applicable to conforming federal extended unemployment compensation programs. By doing so, if Congress were to pass another extended unemployment compensation program in line with previous extension programs, the rule language for waiver and over-

payment would not require additional rulemaking. References to TEUC will be replaced with "federal extended unemployment compensation." Subsection 815.12(i) will be removed because such a presumption of financial hardship is not generally applicable. Finally, the waiver provisions of §815.12 are being amended to reflect the more efficient practice whereby the waiver is automatically considered by the Agency rather than requiring the claimant request a waiver in writing.

Section 815.29 contains the rule defining the coordination between Extended Unemployment Compensation and regular compensation as required by P.L. 111 - 205 §3. This section is being repealed as it is no longer applicable.

For convenience and ease of use, new Subchapter G is being created to contain rules for the CARES Act. New Subchapter G will address definitions, coordination of programs, appeals, overpayments, and fraud.

The definitions will define the CARES Act programs. The coordination rules will address the interactions between existing benefit programs and those provided for in the CARES Act. These rules are necessary to provide the order in which each of these benefit programs are paid to claimants.

The appeals rules will address the appellate procedure for CARES Act programs. The overpayment rules will address the deduction of CARES Act program benefit payments to recover previously overpaid benefits to which the claimant is not entitled. The fraud rules will address fraud penalties and PUA fraud.

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

The Agency proposes the following amendments to Subchapter A:

§815.1. Definitions

Section 815.1 is amended to add new paragraph (14), which defines "places accessible" as locations in which an employer shall provide required notices to an employee, as provided in the Act, Chapter 208.

New subparagraph (A) provides that "places accessible" includes notices containing the required information are to be displayed in a manner reasonably calculated to be encountered by all employees.

New subparagraph (B) provides that "places accessible" means an employer must provide the required notice information individually to an employee upon separation from employment. As the notice is provided directly to the individual, the employer has significant flexibility in how this information may be made known. Such information may be provided in a paper format, including by mail or with separation paperwork, email, text, or other means reasonably calculated to ensure the individual receives the required notification.

Existing paragraphs (14) and (15) are renumbered to (15) and (16).

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

The Agency proposes the following amendments to Subchapter B:

§815.12. Waiver of Repayment and Recovery of Temporary Extended Unemployment Compensation Overpayments

Section 815.12 is amended as follows:

Subsections (a) - (h) have been amended to change references to Temporary Extended Unemployment Compensation (TEUC) to federal extended unemployment compensation.

Subsections (b) - (d) have been amended to reflect that an overpayment waiver determination will be made by the Agency or the Commission without a written request from a claimant. The decision may be appealed in accordance with Chapter 212 of the Act and under the administrative regulations of §§815.16 - 815.18.

Subsections (i) and (j) are removed and subsection (k) is relettered to subsection (i). New subsection (j) is added to reflect that for the purposes of this section, a federal extended unemployment compensation program is an unemployment compensation program enacted by Congress that provides additional federally funded benefits. It does not include EB under Chapter 815 Subchapter F or Chapter 209 of the Act.

§815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation

Section 815.29 is repealed as it relates to legislation no longer in effect.

SUBCHAPTER F. EXTENDED BENEFITS

The Agency proposes the following amendments to Subchapter F:

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger

Section 815.170 is amended as follows:

Subsection (a) provides that pursuant to §209.025 of the Act, if full federal funding for EB is available, a week is a state "on" indicator week if:

-- the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

--the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average rate for either, or both, of the corresponding three-month periods ending in the two preceding calendar years.

Subsection (b) states that there is a state "off" indicator for a week if either the requirements of subsection (a)(1) or (a)(2) are not satisfied.

Subsection (c) clarifies that notwithstanding this section, any week for which there would otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

Subsection (d) is deleted.

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount

Section 815.171 is amended as follows:

Subsection (a) addresses periods of high unemployment under a TUR trigger under §815.170(a). If the conditions under §815.170(a) are met, and the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period exists.

Subsection (b) provides that with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible claimant for the claimant's eligibility period is the lesser of:

- 80 percent of the total amount of regular compensation payable to the claimant during the claimant's benefit year under the Act;
- 20 times the claimant's average weekly benefit amount; or
- 46 times the claimant's average weekly benefit amount, reduced by the regular compensation paid, during the claimant's benefit year under the Act.

Subsection (c) provides that if the full federal funding for EB provides for an additional extended benefit amount payable to an eligible claimant in excess of that provided for in subsection (b), then that amount shall be the total extended benefit amount.

§815.172. Concurrent Emergency Unemployment Compensation Programs

Section 815.172 is amended to capitalize Extended Benefits.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits

Section 815.173 is repealed as it relates to legislation no longer in effect.

§815.174. Financing of Extended Benefits

Section 815.174 is amended as follows:

Subsection(a) provides that if full federal funding for EB is available, the provisions of §209.082, Charges to Reimbursing Employer, and §209.083, Charges to Taxed Employer, of the Act shall not apply; however, subsection (b) states that the provisions of §209.084, Charges to Governmental Employer, and §209.0845, Charges to Indian Tribe, of the Act shall continue to apply.

Subsection (c) is deleted.

SUBCHAPTER G. CARES ACT PROVISIONS

The Agency proposes new Subchapter G:

§815.180. Definitions

New §815.180 defines the terms for Subchapter G.

New paragraph (1) defines CARES Act as the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116 - 136; TITLE II--Assistance for American Workers, Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.

New paragraph (2) defines FPUC as the Federal Pandemic Unemployment Compensation provisions of §2104 of the CARES Act.

New paragraph (3) defines FRWW as the Federally Reimbursed Waiting Week provisions of §2105 of the CARES Act.

New paragraph (4) defines PEUC as the Pandemic Emergency Unemployment Compensation provisions of §2107 of the CARES Act.

New paragraph (5) defines PUA as the Pandemic Unemployment Assistance provisions of §2102 of the CARES Act.

§815.181. Coordination of CARES Act Programs

New §815.181 describes how CARES Act programs will be integrated into existing benefit programs.

New subsection (a) provides for the program order in which a claimant can claim benefits. That order is as follows:

For an individual who is eligible for regular compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers (UCX), the following order of payment applies:

- The claimant must first apply for and receive regular compensation. The amount and duration of these benefits are as defined by the Act;
- if the claimant exhausts regular compensation, the claimant may then be eligible to receive PEUC;
- if the claimant exhausts PEUC and the state has "triggered on" to EB under Chapter 209 of the Act, the claimant may then be eligible to receive EB;

--if the State is not "triggered on" to EB or the individual exhausts EB, the claimant may then be eligible to receive PUA. If the State "triggers on" to EB during the period in which the claimant is collecting PUA and the claimant has not previously exhausted entitlement to EB for the respective benefit year, then the claimant must stop collecting PUA and file for EB; and

--if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, EB if "triggered on", and PUA.

New subsection (b) describes that for a claimant who is not eligible for regular compensation, EB, or PEUC, and who meets the federal requirements, the individual may be eligible to collect PUA.

New subsection (c) addresses the additional compensation provided by FPUC. FPUC provides for additional compensation to an individual collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with the respective underlying program for which the claimant is eligible. This applies for the benefit week ending April 4, 2020, through the benefit week ending July 25, 2020 unless subsequently amended by federal law.

§815.182. Appeals

New §815.182 specifies the appeals process for CARES Act programs.

New subsection (a) states a claimant may appeal an adverse FPUC, FRWW, PEUC, or PUA determination pursuant to the provisions and timeframes of Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

New subsection (b) clarifies an employer is not a "party of interest," pursuant to §815.15(c), to a FPUC, FRWW, PEUC, or PUA determination and therefore does not have appeal rights.

An employer may appear at a FPUC, FRWW, PEUC, or PUA hearing to offer evidence.

New subsection (c) relates to FPUC. It specifies that, when considering an appeal involving FPUC, the Appeal Tribunal and Commission shall look to the merits of the denial of the underlying benefit when determining eligibility for FPUC payments.

§815.183. Waiver

New §815.183 lays out which CARES Act programs are subject to a potential waiver of overpayments.

New subsection (a) states FPUC, the FRWW, and PEUC are federal extended unemployment compensation programs and therefore subject to §815.12.

New subsection (b) clarifies that PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment Assistance programs regulated under Title 20, Part 625, Code of Federal Regulations. Therefore, PUA does not constitute a federal extended unemployment compensation program and the waiver provisions of §815.12 do not apply.

§815.184. Overpayments

New §815.184 explains how CARES Act program overpayments will be administered.

New subsection (a) states that unless a FPUC, FRWW, or PEUC overpayment is otherwise recovered, or is waived, the Agency shall, during the three-year period after the date the claimant received the payment of FPUC, FRWW, or PEUC to which the claimant was not entitled, recover the overpayment by deductions from any sums payable to the claimant. No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

New subsection (b) states that unless a PUA overpayment is otherwise recovered, the Agency shall recover the overpayment by deductions from any sums payable to the claimant. A PUA overpayment may not be waived per §815.183(b) and is not subject to the three-year period limitation stated in §815.184(a). No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

New subsection (c) states that if a claimant has an unemployment benefits overpayment with an appropriate agency in another state, and the Agency has a reciprocal arrangement with that other state agency under §211.004 of the Act, the Agency shall deduct 50 percent per each single deduction of the amount of FPUC, FRWW, PEUC, or PUA otherwise payable to the claimant.

§815.185. Fraud

New §815.185 explains how certain instances of fraud will be handled by the Agency.

New subsection (a) states a penalty for fraudulently obtaining benefits under §214.003 of the Act shall not apply to fraudulently obtained FPUC, FRWW, PEUC, and PUA benefits forfeited.

New subsection (b) pertains to FPUC and clarifies that the Agency and the Commission shall examine the underlying payment or statement which precipitated the fraud determination when examining FPUC fraud.

New subsection (c) states that under PUA, the Agency will apply the provisions of 20 C.F.R. §625.14(i) when determining disqualification for fraud.

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, the Agency 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 United States 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. The Commission completed a Takings Impact Analysis 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 ensure compliance with federal law with respect to extended unemployment compensation programs under the CARES Act and to maximize the state's ability to take advantage of full federal funding under EUSSA.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States 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

The Agency has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Agency;

--the proposed amendments will not require an increase or decrease in fees paid to the Agency;

--the proposed amendments will not create a new regulation;

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

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

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed 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 of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Clay Cole, Director, Unemployment Insurance Division, and Paul Carmona, Director, Regulatory Integrity Division, have 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 that Texas remains eligible to receive full federal extended unemployment benefits during the COVID-19 pandemic and its aftermath.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.1

STATUTORY AUTHORITY

The rule is proposed under Texas Labor Code §301.0015(a)(6) which provides the Agency with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Labor Code, Title 4.

§815.1. 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) Act--The Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended.

(2) Additional claim--A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when a break of one week or more has occurred in the claim series with intervening employment. The employer named on an additional claim will have 14 days from the date notice of the claim is mailed to reply to the notice. The additional claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(3) Adequate notification--A notification of adverse facts, including any subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.

(A) Notification to the Commission is adequate as long as the employer or its agent gives a reason, supported by facts, directly related to the allegation raised regarding the claimant's right to benefits.

(B) The employer or its agent may demonstrate good cause for failing to provide adequate notice. Good cause is established solely by showing that the employer or its agent was prevented from providing adequate notification due to compelling circumstances beyond the control of the employer or its agent.

(C) Examples of adequate notification of adverse facts include, but are not limited to, the following:

(i) The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.

(ii) The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.

(D) A notification is not adequate if it provides only a general conclusion without substantiating facts. A general statement that a worker has been discharged for misconduct connected with the work is inadequate. The allegation may be supported by a summary of the events, which may include facts documenting the specific reason for the worker's discharge, such as, but not limited to:

(i) policies or procedures;

(ii) warnings;

(iii) performance reviews;

(iv) attendance records;

(v) complaints; and

(vi) witness statements.

(4) Agency--The unit of state government that is presided over by the Commission and under the direction of the executive director, which operates the integrated workforce development system and administers the unemployment compensation insurance program in this state as established under Texas Labor Code, Chapter 301. It may also be referred to as the Texas Workforce Commission.

(5) Appeal--A submission by a party requesting the Agency or the Commission to review a determination or decision that is adverse to that party. The determination or decision must be appealable and pertain to entitlement to unemployment benefits; chargeback as provided in the Act, Chapter 204, Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax coverage or contributions or reimbursements. This definition does not grant rights to a party.

(6) Base period with respect to an individual--The first four consecutive completed calendar quarters within the last five completed

calendar quarters immediately preceding the first day of the individual's benefit year, or any other alternate base period as allowed by the Act.

(7) Benefit period--The period of seven consecutive calendar days, ending at midnight on Saturday, with respect to which entitlement to benefits is claimed, measured, computed, or determined.

(8) Benefit wage credits--Wages used to determine an individual's monetary eligibility for benefits. Benefit wage credits consist of those wages an individual received for employment from an employer during the individual's base period as well as any wages ordered to be paid to an individual by a final Commission order, pursuant to its authority under Texas Labor Code, Chapter 61. Benefit wage credits awarded by a final Commission order that were due to be paid to the individual by an employer during the individual's base period shall be credited to the quarter in which the wages were originally due to be paid.

(9) Board--Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i) (also referred to as an LWDB).

(10) Commission--The three-member body of governance composed of Governor-appointed members in which there is one representative of labor, one representative of employers, and one representative of the public as established in Texas Labor Code §301.002, which includes the three-member governing body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings involving unemployment insurance issues regarding tax coverage, contributions or reimbursements.

(11) Day--A calendar day.

(12) Landman--An individual who is qualified to do field work in the purchasing of right-of-way and leases of mineral interests, record searches, and related real property title determinations, and who is primarily engaged in performing the field work.

(13) Person--May include a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(14) Places accessible--Locations in which an employer shall provide required notices to an employee as provided in the Act, Chapter 208. This includes:

(A) Notices providing general information about filing a claim for unemployment benefits shall be displayed in a manner reasonably calculated to be encountered by all employees; and

(B) Upon separation from employment, an employer shall provide an employee individual notice of general information about filing a claim for unemployment benefits as set out in the printed notice referenced in §208.001(b) of the Act. As the notice is provided directly to the individual, the employer has significant flexibility in how this information may be made known. Such information may be provided:

(i) in a paper format, including by mail or with separation paperwork;

(ii) by email;

(iii) by text; or

(iv) by other means reasonably calculated to ensure the individual receives the required notification.

(15) [(14)] Reopened claim--The first claim filed following a break in claim series during a benefit year which was caused by other than intervening employment, i.e., illness, disqualification, unavailability, or failure to report for any reason other than job attachment. The reopened claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(16) [(15)] Week--A period of seven consecutive calendar days ending at midnight on Saturday.

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 B. BENEFITS, CLAIMS, AND APPEALS

40 TAC §815.12

The rule is proposed under Texas Labor Code §301.0015(a)(6) which provides the Agency with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Labor Code, Title 4.

§815.12. Waiver of Repayment and Recovery of Federal Extended Unemployment Compensation [Temporary Extended Unemployment Compensation] Overpayments.

(a) When conforming with an applicable federal extended unemployment compensation program, this [This] section implements [the Temporary Extended Unemployment Compensation (TEUC)] waiver of repayment requirements [program] by setting out the process that the Agency and Commission shall use to determine whether to waive the repayment and recovery of non-fraudulent overpayments. The terms repayment and recovery will be referred to as repayment in this section, and the federal extended unemployment compensation [Temporary Extended Unemployment Compensation] overpayment will be referred to as overpayment.

(b) When a decision of the Agency or Commission results in a federal extended unemployment compensation [an] overpayment, the Agency or Commission will also determine whether the overpayment will be waived [an appealable determination and a request for waiver of repayment of an overpayment are mailed to the claimant].

(c) A claimant may appeal the underlying issue that created the [an] overpayment determination pursuant to the provisions of Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

(d) A claimant may also appeal a denial of a request to waive the repayment of an overpayment in the same manner as stated in subsection (c) of this section. [A claimant's written request for waiver of repayment of an overpayment must be filed within 14 days of the date a request to waive the repayment of an overpayment notification is mailed by the Agency. The waiver request must be filed in accordance with §815.16(1)(A) of this chapter (relating to Appeals to Appeal Tribunals from Determinations) or mailed to the address on the request form.]

(e) The Agency or Commission will deny a request to waive the repayment of a non-fraudulent overpayment if it determines that:

(1) the payment of the federal extended unemployment compensation [TEUC] benefits is the fault of the claimant, or

(2) the repayment is not contrary to equity and good conscience.

(f) The Agency or Commission will waive the repayment of a non-fraudulent overpayment if it determines that:

(1) the payment of the federal extended unemployment compensation [TEUC] benefits is not the fault of the claimant, and

(2) the repayment is contrary to equity and good conscience.

(g) In determining whether fault exists, the Agency or Commission shall consider the following:

(1) whether a material statement or representation was made by the claimant in connection with the application for the federal extended unemployment compensation [TEUC] that resulted in an overpayment, and whether the claimant knew or should have known that the statement or representation was inaccurate;

(2) whether the claimant failed or caused another to fail to disclose a material fact, in connection with an application for the federal extended unemployment compensation [TEUC] that resulted in an overpayment, and whether the claimant knew or should have known that the fact was material;

(3) whether the claimant knew or could have been expected to know that the claimant was not entitled to the federal extended unemployment compensation [the TEUC] payment; and

(4) whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the claimant or of which the claimant had knowledge, and which was erroneous or inaccurate or otherwise wrong.

(h) In determining whether equity and good conscience exists, the Agency or Commission shall consider the following factors:

(1) whether the overpayment is the result of a decision on appeal;

(2) whether the Agency gave notice to the claimant that the claimant may be required to repay the overpayment in the event of a reversal of the federal extended unemployment compensation [a TEUC] eligibility determination on appeal; and

(3) whether repayment of the federal extended unemployment compensation [TEUC] overpayment will cause financial hardship to the claimant.

[(i) The Commission has determined that requiring the claimant to repay a TEUC overpayment will cause financial hardship to the claimant, because in order to receive TEUC benefits, the claimant had to have been unemployed for an extended period of time.]

[(j) A claimant may appeal a denial of a request to waive the repayment of an overpayment pursuant to subsection (e) of this Section.]

(i) [(k)] Hearings under this section [Section] will be conducted in a fair and impartial manner in accordance with the provisions of §815.15 of this chapter (relating to Parties with Appeal Rights), §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages), except to the extent that the sections are clearly inapplicable.

(j) For the purposes of this section, a federal extended unemployment compensation program is an unemployment compensation program enacted by Congress that provides additional federally funded benefits. It does not include Extended Benefits under Subchapter F of this chapter or Chapter 209 of the Act.

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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40 TAC §815.29

The rule is repealed under Texas Labor Code §301.0015(a)(6) which provides the Agency with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4.

§815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation.

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 F. EXTENDED BENEFITS

40 TAC §§815.170 - 815.172, 815.174

The rules are proposed under Texas Labor Code §301.0015(a)(6) which provides the Agency with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 4.

§815.170. *State "On" and "Off" Indicator Weeks: Conditional Trigger.*

(a) Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is available, a week is a state "on" indicator week if:

(1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

(2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average rate for either, or both, of the corresponding three-month periods ending in the two preceding calendar years.

(b) There is a state "off" indicator for a week if either the requirements of subsection (a)(1) or (a)(2) of this section are not satisfied.

(c) Notwithstanding this section, any week for which there would otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

{(a) In addition to the state "on" indicator provisions for extended benefits in the Act, and with respect to weeks of unemployment beginning on or after February 17, 2009, a week is a state "on" indicator week if:}

{(1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and}

{(2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.}

{(b) With respect to compensation for weeks of unemployment beginning after the date of enactment of Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) and ending on or before the date established in federal law permitting this provision, a week is a state "on" indicator week if:}

{(1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and}

{(2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.}

{(c) In addition to the state "off" indicator provisions for extended benefits in the Act, there is a state "off" indicator for only a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in subsection (a) or (b) of this section result in an "on" indicator.}

{(d) This section continues in effect until the week ending four weeks prior to the last week of unemployment for which 100 percent federal sharing is available under P.L. 111-5, Division B, Title II, §2005(a), without regard to the extension of federal sharing for certain claims as provided under §2005(e) of such law.}

§815.171. *High Unemployment Period: Maximum Total Extended Benefit Amount.*

(a) If the conditions under §815.170(a) of this subchapter are met, and the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period shall exist.

(b) Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible claimant for the claimant's eligibility period is the lesser of:

(1) 80 percent of the total amount of regular compensation payable to the claimant during the claimant's benefit year under the Act;

(2) 20 times the claimant's average weekly benefit amount;

(3) 46 times the claimant's average weekly benefit amount, reduced by the regular compensation paid, during the claimant's benefit year under the Act.

(c) Pursuant to §209.025 of the Act, if the full federal funding for Extended Benefits provides for an additional extended benefit amount payable to an eligible claimant in excess of that provided for in subsection (b) of this section, that amount shall be the total extended benefit amount.

{(a) If the conditions under §815.170(a) or (b) of this subchapter are met except that the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period shall exist.}

{(b) Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible individual for the individual's eligibility period is 80 percent of the total amount of regular benefits that were payable to the individual under the Act in the individual's benefit year.}

{(c) This section applies as long as §815.170 of this subchapter is in effect.}

§815.172. *Concurrent Emergency Unemployment Compensation Programs.*

The Agency may pay unemployment compensation benefits under other emergency unemployment compensation programs that may be in effect prior to paying Extended Benefits [extended benefits] under this subchapter.

§815.174. *Financing of Extended Benefits.*

(a) Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is available, the provisions of §209.082, Charges to Reimbursing Employer, and §209.083, Charges to Taxed Employer, of the Act shall not apply.

(b) The provisions of §209.084, Charges to Governmental Employer, and §209.0845, Charges to Indian Tribe, of the Act shall continue to apply.

{(a) If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5, Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act relating to taxed employers shall not apply.}

{(b) The provisions of §209.084, regarding Charges to Governmental Employer, and §209.0845, regarding Charges to Indian Tribe, of the Act shall continue to apply.}

{(e) This section applies as long as §815.170 of this subchapter is in effect.}

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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40 TAC §815.173

The repeal is proposed under Texas Labor Code §301.0015(a)(6) which provides the Agency with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits.

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 G. CARES ACT PROVISIONS

40 TAC §§815.180 - 815.185

The new rules are proposed under Texas Labor Code §301.0015(a)(6) which provides the Agency with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 4.

§815.180. Definitions.

The following definitions shall apply to this subchapter:

(1) CARES Act--refers to the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116 - 136; TITLE II--Assistance for American Workers, Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.

(2) FPUC--refers to the Federal Pandemic Unemployment Compensation provisions of §2104 of the CARES Act.

(3) FRWW--refers to the Federally Reimbursed Waiting Week provisions of §2105 of the CARES Act.

(4) PEUC--refers to the Pandemic Emergency Unemployment Compensation provisions of §2107 of the CARES Act.

(5) PUA--refers to the Pandemic Unemployment Assistance provisions of §2102 of the CARES Act.

§815.181. Coordination of CARES Act Programs.

(a) For an individual who is eligible for regular compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers (UCX), the following order of payment applies:

(1) The claimant must first apply for and receive regular compensation. The amount and duration of these benefits are as defined by the Act;

(2) if the claimant exhausts regular compensation, the claimant may then be eligible to receive PEUC;

(3) if the claimant exhausts PEUC and the state has "triggered on" to Extended Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible to receive EB;

(4) if the State is not "triggered on" to EB or the individual exhausts EB, the claimant may then be eligible to receive PUA. If the State "triggers on" to EB during the period in which the claimant is collecting PUA and the claimant has not previously exhausted entitlement to EB for the respective benefit year, then the claimant must stop collecting PUA and file for EB; and

(5) if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, EB if "triggered on", and PUA.

(b) For a claimant who is not eligible for regular compensation, EB, or PEUC, and who meets the federal requirements, the individual may be eligible to collect PUA.

(c) FPUC provides for additional compensation to an individual collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with payments under these programs. This applies for the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020 unless subsequently amended by federal law.

§815.182. Appeals.

(a) A claimant may appeal an adverse FPUC, FRWW, PEUC, or PUA determination pursuant to the provisions and timeframes of Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

(b) An employer is not a "party of interest", pursuant to §815.15(c) of this chapter (relating to Parties with Appeal Rights), to a FPUC, FRWW, PEUC, or PUA determination and therefore does not have appeal rights. An employer may appear at a FPUC, FRWW, PEUC, or PUA hearing to offer evidence when appropriate.

(c) When considering an appeal involving FPUC, the Appeal Tribunal and Commission shall look to the merits of the denial of the underlying benefit when determining eligibility for FPUC payments.

§815.183. Waiver.

(a) FPUC, the FRWW, and PEUC are federal extended unemployment compensation programs and therefore subject to §815.12 of this chapter (relating to Waiver of Repayment and Recovery of Federal Extended Unemployment Compensation Overpayments).

(b) PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment Assistance programs regulated under Title 20,

Part 625, Code of Federal Regulations. Therefore, PUA does not constitute a federal extended unemployment compensation program and the waiver provisions of §815.12 of this chapter do not apply.

§815.184. Overpayments.

(a) Unless a FPUC, FRWW, or PEUC overpayment is otherwise recovered, or is waived, the Agency shall, during the three-year period after the date the claimant received the payment of FPUC, FRWW, or PEUC to which the claimant was not entitled, recover the overpayment by deductions from any sums payable to the claimant. No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

(b) Unless a PUA overpayment is otherwise recovered, the Agency shall recover the overpayment by deductions from any sums payable to the claimant. A PUA overpayment may not be waived per §815.183(b) of this chapter and is not subject to the three-year period limitation stated in subsection(a) of this section. No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

(c) If a claimant has an unemployment benefits overpayment with an appropriate agency in another state, and the Agency has a reciprocal arrangement with that other state agency under §211.004 of the Act, the Agency shall deduct 50 percent per each single deduction of the amount of FPUC, FRWW, PEUC, or PUA otherwise payable to the claimant.

§815.185. Fraud.

(a) A penalty for fraudulently obtaining benefits under §214.003 of the Act shall not apply to fraudulently obtained FPUC, FRWW, PEUC, and PUA benefits forfeited.

(b) The Agency and the Commission shall examine the underlying payment or statement which precipitated the fraud determination when examining FPUC fraud.

(c) In determining disqualification for fraud under PUA, the provisions of 20 C.F.R. §625.14(i) shall apply.

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 July 15, 2020.

TRD-202002929

Dawn Cronin

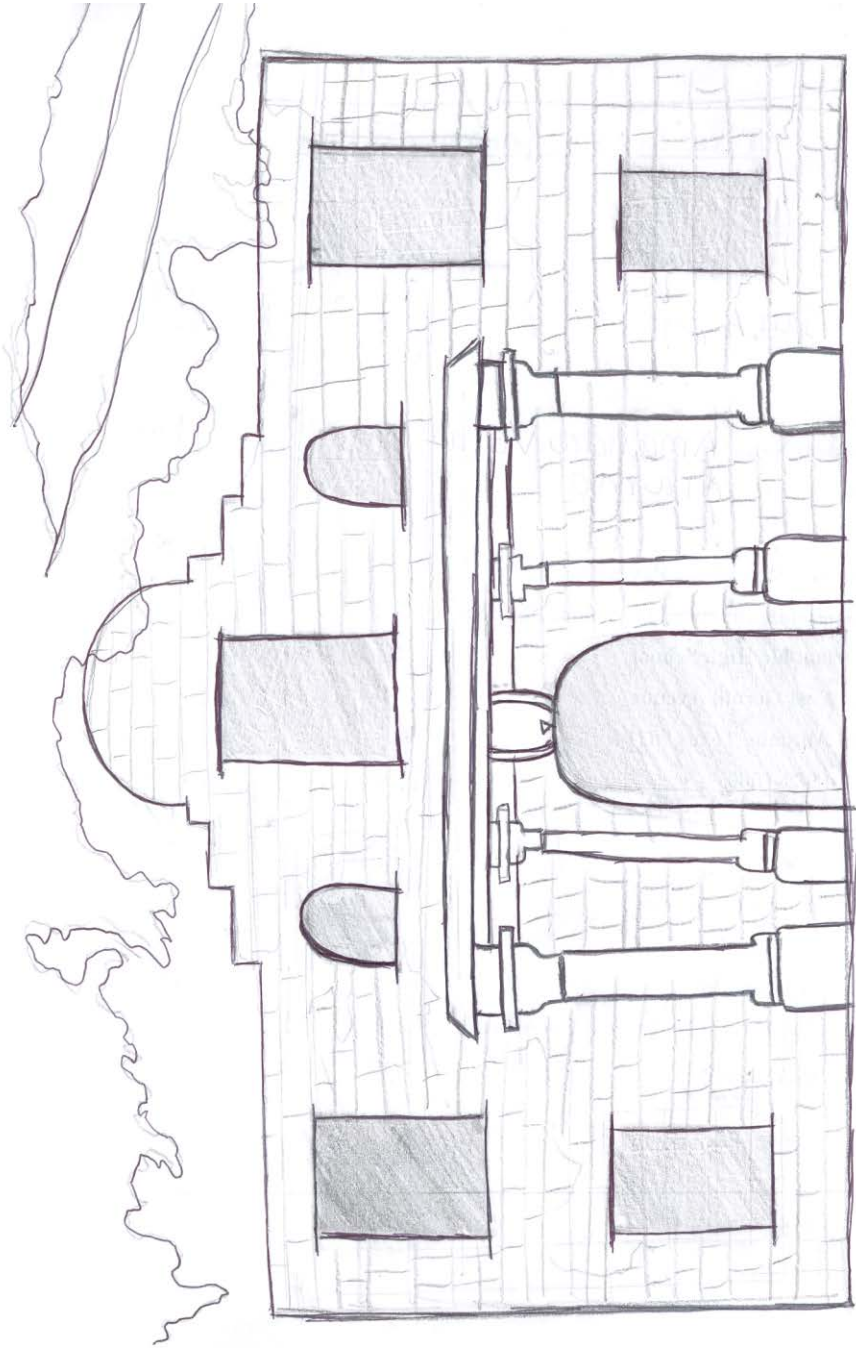
Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: August 30, 2020

For further information, please call: (512) 689-9855





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1305

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.1305, concerning Uniform Hospital Rate Increase Program. The amendment is adopted with changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2620). The rule will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rule amendment is to include non-state-owned institutions for mental diseases (IMDs) as a class of hospital eligible for rate increases under the uniform hospital rate increase program (UHRIP).

UHRIP is a Medicaid managed care directed payment program authorized by 42 CFR §438.6(c). HHSC launched UHRIP as a pilot project in December 2017 in the El Paso and Bexar managed care service delivery areas (SDAs). In September 2018, UHRIP expanded to the entire state. Through UHRIP, managed care organizations (MCOs) are contractually required to increase the reimbursement rate paid to hospitals for inpatient and outpatient services. The rate increase is a uniform percentage that varies by hospital class. UHRIP is a voluntary program and requires participation from all MCOs and network hospitals in an SDA.

Federal regulation has largely prohibited states from receiving federal Medicaid funds for services provided to beneficiaries in IMDs. This restriction is commonly referred to as the "Medicaid IMD Exclusion." However, two exemptions exist under §1905(a) of the Social Security Act: (1) inpatient hospital services and nursing facility services for individuals 65 years of age or older, and (2) inpatient psychiatric hospital services for individuals under age 21.

The rule amendment includes non-state-owned IMDs among the classes of hospitals eligible for rate increases under UHRIP. Rate increases will apply only to payments made for inpatient psychiatric hospital services provided by non-state-owned IMDs to individuals under the age of 21 or inpatient hospital services provided by non-state-owned IMDs to individuals 65 years of age or older. Expanding UHRIP to these providers will increase the

availability of services for eligible Medicaid beneficiaries with behavioral health needs.

The rule amendment provides that UHRIP rate increases apply only to the in-network managed care claims billed under the primary National Provider Identifier (NPI) number associated with the hospital. The amendment clarifies that a non-hospital sub-provider owned or operated by a hospital is not eligible to receive the increase.

COMMENTS

The 31-day comment period ended May 26, 2020.

During this period, HHSC received written comments regarding the proposed rule from four commenters: Signature Healthcare Services, LLC, Texas Hospital Association (THA), Teaching Hospitals of Texas (THOT), and Universal Health Services, Inc.

A summary of comments relating to the rule and HHSC's responses to the comments follow.

Comment: Most commenters supported the proposed amendment to include non-state-owned IMDs as a class of hospital eligible for rate increases under UHRIP.

Response: HHSC appreciates the support. No changes were made in response to this comment.

Comment: One commenter supported the proposed amendment to include non-state-owned IMDs as a class of hospital eligible for rate increases under UHRIP, if the UHRIP pool size is increased to accommodate the additional class of hospital. The commenter was concerned that adding a class to the program without increasing the pool will result in reductions to current hospital classes participating in UHRIP.

Response: HHSC understands the comment but notes that the pool size and rate increase for hospitals participating in UHRIP can change from year to year, depending on the implementation of the program. Additionally, HHSC must obtain approval on an annual basis from the Centers for Medicare and Medicaid Services (CMS) to operate the program. No changes were made in response to this comment.

Comment: Three commenters requested HHSC expand the UHRIP rate increases for non-state-owned IMDs to include inpatient services provided to Medicaid individuals ages 21 through 64. The commenters pointed out that under HHSC's policy, Texas Medicaid MCOs can reimburse IMDs for such services up to 15 days in a month. One commenter acknowledged that HHSC must adhere to CMS actuarial requirements related to IMDs and their costs for this population and requested that HHSC work with CMS to determine an appropriate way to capture this population in UHRIP.

Response: HHSC declines to make the suggested change. As one of the commenters pointed out, there are certain federal reg-

ulations, including actuarial requirements, related to IMDs providing services to individuals ages 21 through 64. These requirements make it difficult to provide a UHRIP rate increase for this population. HHSC will not include rate increases for this population at this time but will take it into consideration for a future rule amendment. No changes were made in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

§353.1305. *Uniform Hospital Rate Increase Program.*

(a) Introduction. This section describes the circumstances under which HHSC directs an MCO to provide a uniform percentage rate increase to hospitals in the MCO's network in a designated service delivery area (SDA) for the provision of inpatient services, outpatient services, or both. This section also describes the methodology used by HHSC to calculate and administer such rate increase.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this and other sections of this subchapter may be defined in §353.1301 of this subchapter (relating to General Provisions).

(1) Children's hospital--A Medicaid hospital designated by Medicare as a children's hospital.

(2) Inpatient hospital services--Services ordinarily furnished in a hospital for the care and treatment of inpatients under the direction of a physician or dentist, or a subset of these services identified by HHSC. Inpatient hospital services do not include skilled nursing facility or intermediate care facility services furnished by a hospital with swing-bed approval, and any other services that HHSC determines should not be subject to the rate increase.

(3) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(4) Non-urban public hospital--

(A) A hospital owned and operated by a governmental entity, other than a hospital described in paragraph (8) of this subsection, defining rural public hospital, or a hospital described in paragraph (10) of this subsection, defining urban public hospital; or

(B) A hospital meeting the definition of rural public-financed hospital in §355.8065(b)(37) of this title (relating to Disproportionate Share Hospital Reimbursement Methodology), other than a hospital described in paragraph (7) of this subsection defining rural private hospital.

(5) Outpatient hospital services--Preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished to

outpatients of a hospital under the direction of a physician or dentist, or a subset of these services identified by HHSC. HHSC may, in its contracts with MCOs governing rate increases under this section, exclude from the definition of outpatient hospital services such services as are not generally furnished by most hospitals in the state, or such services that HHSC determines should not be subject to the rate increase.

(6) Program period--A period of time for which HHSC will contract with participating MCOs to pay increased capitation rates for the purpose of provider payments under this section. Each program period is equal to a state fiscal year beginning September 1 and ending August 31 of the following year. An SDA that is unable to participate in the program described in this section beginning September 1 may apply to participate beginning March 1 of the program period and ending August 31. Participation during such a modified program period is subject to the application and intergovernmental-transfer deadlines described in subsection (g) of this section.

(7) Rural private hospital--A privately-operated hospital that is a rural hospital as defined in §355.8052 of this title (relating to Inpatient Hospital Reimbursement).

(8) Rural public hospital--A hospital that is owned and operated by a governmental entity and is a rural hospital as defined in §355.8052 of this title.

(9) State-owned hospital--A hospital that is owned and operated by a state university or other state agency.

(10) Urban public hospital--A hospital that is operated by or under a lease contract with one of the following entities: the Dallas County Hospital District, the El Paso County Hospital District, the Harris County Hospital District, the Tarrant County Hospital District, the Travis County Healthcare District dba Central Health, the University Health System of Bexar County, the Ector County Hospital District, the Lubbock County Hospital District, or the Nueces County Hospital District.

(c) Classes of participating hospitals.

(1) HHSC may direct the MCOs in an SDA that is participating in the program described in this section to provide a uniform percentage rate increase to all hospitals within one or more of the following classes of hospital with which the MCO contracts for inpatient or outpatient services:

- (A) children's hospitals;
- (B) non-urban public hospitals;
- (C) rural private hospitals;
- (D) rural public hospitals;
- (E) state-owned hospitals;
- (F) urban public hospitals;
- (G) non-state-owned IMDs; and
- (H) all other hospitals.

(2) If HHSC directs rate increases to more than one class of hospital within the SDA, the percentage rate increases directed by HHSC may vary between classes of hospital.

(d) Eligibility. HHSC determines eligibility for rate increases by SDA and class of hospital.

(1) Service delivery area. Only hospitals in an SDA that includes at least one sponsoring governmental entity are eligible for a rate increase.

(2) Class of hospital. HHSC will identify the class or classes of hospital within each SDA described in paragraph (1) of this subsection to be eligible for a rate increase. HHSC will consider the following factors when identifying the class or classes of hospital eligible for a rate increase and the percent increase applicable to each class:

(A) whether a class of hospital contributes more or less significantly to the goals and objectives in HHSC's quality strategy, as required in 42 C.F.R. §438.340, relative to other classes;

(B) which class or classes of hospital the sponsoring governmental entity wishes to support through intergovernmental transfers (IGTs) of public funds, as indicated on the application described in subsection (g) of this section; and

(C) the percentage of Medicaid costs incurred by the class of hospital in providing care to Medicaid managed care clients that are reimbursed by Medicaid MCOs prior to any uniform rate increase administered under this section.

(e) Services subject to rate increase.

(1) HHSC may direct the MCOs in an SDA to increase rates for all or a subset of inpatient services, all or a subset of outpatient services, or all or a subset of both, based on the service or services that will best advance the goals and objectives of HHSC's quality strategy.

(2) In addition to the limitations described in paragraph (1) of this subsection, rate increases for a non-state-owned IMD are limited to inpatient psychiatric hospital services provided to individuals under the age of 21 and to inpatient hospital services provided to individuals 65 years or older.

(3) UHRIP rate increases will apply only to the in-network managed care claims billed under a hospital's primary National Provider Identifier (NPI) and will not be applicable to NPIs associated with non-hospital sub-providers owned or operated by a hospital.

(f) Determination of percentage of rate increase.

(1) In determining the percentage of rate increase applicable to one or more classes of hospital, HHSC will consider the following factors:

(A) information from the participants in the SDA (including hospitals, managed-care organizations, and sponsoring governmental entities) on one or both of the following, as indicated on the application described in subsection (g) of this section:

(i) the amount of IGT the sponsoring governmental entities propose to transfer to HHSC to support the non-federal share of the increased rates for the first six months of a program period; and

(ii) the percentage rate increase the SDA participants propose for one or more classes of hospital for the first six months of a program period;

(B) the class or classes of hospital determined in subsection (d)(2) of this section;

(C) the type of service or services determined in subsection (e) of this section;

(D) actuarial soundness of the capitation payment needed to support the rate increase;

(E) available budget neutrality room under any applicable federal waiver programs;

(F) hospital market dynamics within the SDA; and

(G) other HHSC goals and priorities.

(2) HHSC will limit the percentage rate increases determined pursuant to this subsection to no more than the levels that are supported by the amount described in paragraph (1)(A)(i) of this subsection. Nothing in this section may be construed to limit the authority of the state to require the sponsoring governmental entities to transfer additional funds to HHSC following the reconciliation process described in §353.1301(g) of this title, if the amount previously transferred is less than the non-federal share of the amount expended by HHSC in the SDA for this program.

(3) After determining the percentage of rate increase using the process described in paragraphs (1) and (2) of this subsection, HHSC will modify its contracts with the MCOs in the SDA to direct the percentage rate increases.

(g) Application process; timing and amount of transfer of non-federal share.

(1) The stakeholders in an SDA initiate the request for HHSC to implement a uniform hospital rate increase program by submitting an application using a form prescribed by HHSC.

(A) The stakeholders in the SDA, including hospitals, sponsoring governmental entities, and MCOs, are expected to work cooperatively to complete the application.

(B) The application provides an opportunity for stakeholders to have input into decisions about which classes of hospital and services are subject to the rate increases, and the percentage rate increase applicable to each class, but HHSC retains the final decision-making authority on these aspects of the program following the processes described in subsections (d) - (f) of this section.

(C) HHSC must receive the completed application no later than six months before the beginning of the program period or modified program period in which the SDA proposes to participate.

(D) HHSC will process the application, contact SDA representatives or stakeholders if there are questions, and notify the stakeholders in the SDA of its decisions on the application, including the classes of hospital eligible for the rate increase, the services subject to the increase, the percentage rate increase applicable to each class, and the total amount of IGT required for the first six months of the program period.

(2) Sponsoring governmental entities must complete the IGT for the first six months of the program period no later than four months prior to the start of the program period, unless otherwise instructed by HHSC. For example, for the program period beginning September 1, 2017, HHSC must receive the IGT for the first six months no later than May 1, 2017; for the modified program period beginning March 1, 2018, HHSC must receive the IGT no later than November 1, 2017.

(3) Following the transfer of funds described in paragraph (2) of this subsection, sponsoring governmental entities must transfer additional IGT at such times and in such amounts as determined by HHSC to be necessary to ensure the availability of funding of the non-federal share of the state's expenditures under this section and HHSC's compliance with the terms of its contracts with MCOs in the SDA. In no event may transfers for directed increases in a program period occur later than November 1 of the calendar year.

(4) HHSC will instruct sponsoring governmental entities as to the required IGT amounts. Required IGT amounts will include all costs associated with the uniform rate increase, including costs associated with premium taxes, risk margins, and administration, plus ten percent.

(h) Effective date of rate increases. HHSC will direct MCOs to increase rates under this section beginning the first day of the program period that includes the increased capitation rates paid by HHSC to each MCO pursuant to the contract between them.

(i) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during the program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter.

(j) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(k) of this subchapter.

(k) December 2017 limited eligibility. Notwithstanding the other provisions of this section, any SDA that received approval from CMS by April 15, 2017, may participate in the program described in this section for dates of service beginning December 1, 2017. Sponsoring governmental entities must complete the IGT for the period of December 1, 2017, through February 28, 2018, by a date to be determined by HHSC.

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

Filed with the Office of the Secretary of State on July 20, 2020.

TRD-202002962

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 407-3285



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER C. STUDENT INDEBTEDNESS

19 TAC §21.49

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Chapter 21, Subchapter C, §21.49, concerning Student Loan Debt Disclosure, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 833). The rule will not be republished.

The amendments to §21.49 provide clarification for required letters advising students of their student loan indebtedness, as authorized by Senate Bill 241, 86th Legislative Session. Specifically, the changes clarify that private loan information is not required in the student debt letters.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, §52.335, which provides the Coordinating Board with the authority to adopt rules stating the nature and requirements of all available formal and informal procedures.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER G. TEXAS COLLEGE

WORK-STUDY PROGRAM

19 TAC §§22.127 - 22.132, 22.134

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Chapter 22, Subchapter G, §§22.127 - 22.132, concerning the Texas College Work-Study Program, and the addition of §22.134, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 834). The rules will not be republished.

Section 22.127 is amended to include references to the Work-Study Student Mentorship Program (Mentorship Program), and §22.128 is amended to add definitions related to the Mentorship Program. The amendments to §22.129 define the participation requirements for the Mentorship Program and delete text that duplicates information included in 19 TAC §22.9. The amendments to §22.130 include references to the Mentorship Program. The amendments to §22.131 provide greater clarity regarding off-campus employers, integrate references to the Mentorship Program, and delete the provision requiring a specific level of student participation in off-campus employment, as authorized by House Bill 3808, 86th Legislative Session. The amendments to §22.132 delete text that duplicates information included in 19 TAC §22.11. The addition of §22.134 integrates the Mentorship rule regarding allocations and disbursement of funds, as previously outlined in 19 TAC §4.195.

No comments were received regarding adoption of the amendments and new rule.

The amendments and new rule are adopted under the Texas Education Code, §56.077, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas College Work-Study Program.

The adopted amendments and new rule affect Texas Education Code, §§56.071 - 56.082.

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

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19 TAC §22.135

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Chapter 22, Subchapter G, §22.135, concerning the Texas College Work-Study Program, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 836). The rule will not be republished.

Section 22.135 is being repealed since it duplicates the information in 19 TAC §22.11.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §56.077, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas College Work-Study Program.

The adopted repeal affects House Bill 1, 86th Legislative Session, III-54, Section 18, Appropriations Transfers.

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

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SUBCHAPTER I. TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

19 TAC §§22.163 - 22.168, 22.170 - 22.174

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Chapter 22, Subchapter I, §§22.163 - 22.168 and §§22.171 - 22.173 and new §22.174, concerning the Texas Armed Services Scholarship Program, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 837). The rules will not be republished.

Amendments to §22.170 were proposed in the same issue of the *Texas Register*, and this rule is being adopted with changes to the proposed text. This rule will be republished.

Throughout §§22.163 - 22.168 and §§22.170 - 22.173, amendments have been proposed to align text with the terminology defined in §22.164. The amendments to §22.163 provide greater clarity regarding the purpose of the Texas Armed Services Scholarship Program. The amendments to §22.164

delete definitions that duplicate language in §22.1 and clarify current definitions. The amendments to §22.165 incorporate language from §22.169 and clarify eligibility when a recipient is enrolled in a five-year degree program. The amendments to §22.166 delete unnecessary language due to the integration of §§22.167 and 22.169, clarify situations when a replacement nominee may be named by an elected official, and update the appointment requirements to reference the distinguished level of achievement created through House Bill 5, 83rd Legislative Session. The amendments to §22.167 delete language that has been integrated into §22.168. The amendments to §22.167 also revise the Coordinating Board's determination of satisfactory academic progress to allow greater opportunity for recipients to successfully complete all program requirements. The amendments to §22.168 integrate language that has been deleted from §22.167 to provide greater clarity regarding the promissory note. The amendments to §22.170 clarify situations where a scholarship converts to a loan. The amendments to §22.171 integrate language regarding prepayments and the application of payments. The amendment to §22.172 eliminates institutional holds on student records and registration for individuals who are delinquent on a Texas Armed Services Scholarship that has converted to a loan. These institutional holds create a barrier to student completion of a certificate or degree. Eliminating this barrier supports the agency's 60x30TX educated population and completion goals. The proposed new rule §22.174 outlines the provisions for death and disability.

No comments were received regarding adoption of the amendments and new rule.

The amendments and new rule are adopted under the Texas Education Code, §61.9774, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas Armed Services Scholarship Program.

The adopted amendments and new rule affect Texas Education Code, §§61.9771 - 61.9776.

§22.170. *Conversion of the Scholarship to a Loan.*

(a) A scholarship will become a loan if the recipient:

(1) Fails to maintain satisfactory academic progress as described in §22.167 of this subchapter (relating to Award Eligibility);

(2) Withdraws from the scholarship program, as indicated through withdrawal or removal from the institution of higher education or that institution's ROTC program or other undergraduate officer commissioning program, without subsequent enrollment in another institution of higher education and that subsequent institution's ROTC program or other undergraduate officer commissioning program; or

(3) Fails to fulfill one of the following:

(A) a four-year commitment to be a member of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or

(B) the minimum active service requirement included in a contract to serve as a commissioned officer in any branch of the armed services of the United States; honorable discharge is considered demonstration of fulfilling the minimum active service requirement.

(b) A scholarship converts to a loan if documentation of the contract or commitment outlined in subsection (a)(3) of this section is not submitted to the Coordinating Board within twelve months of graduation with a baccalaureate degree. Subsequent filing of this documentation will revert the loan back to a scholarship.

(c) If a recipient's scholarship converts to a loan, the recipient:

(1) cannot regain award eligibility in a subsequent academic year; and

(2) loses eligibility to receive any future awards.

(d) If a recipient requires a temporary leave of absence from the institution of higher education and/or the ROTC program or another undergraduate officer commissioning program for personal reasons or to provide service for the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine for fewer than twelve months, the Board may agree to not convert the scholarship to a loan during that time.

(e) If a recipient is required to provide more than twelve months of service in the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine as a result of a national emergency, the Board shall grant that recipient additional time to meet the graduation and service requirements specified in the scholarship agreement.

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

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



19 TAC §§22.169, §22.174

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Chapter 22, Subchapter I, §§22.169 and §22.174, concerning the Texas Armed Services Scholarship Program, without changes to the proposed text as published in the February 7, 2020, issue of the Texas Register (45 TexReg 840). The rules will not be republished.

Section 22.169 is repealed due to the integration of its contents into §22.167, and §22.174 is repealed because it is no longer necessary due to proposed changes to §22.170.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §61.9774, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas Armed Services Scholarship Program.

The adopted repeal affects Texas Education Code, §§61.9771 - 61.9776.

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

Filed with the Office of the Secretary of State on July 14, 2020.

TRD-202002900

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 3, 2020

Proposal publication date: February 7, 2020

For further information, please call: (512) 427-6365



SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.253 - 22.261

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules under Chapter 22, Subchapter M, §§22.257 - 22.261, and amended rules under §§22.253 - 22.256, concerning the Texas Educational Opportunity Grant Program, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 840). The rules will not be republished.

New §22.257 is added to consolidate satisfactory academic progress information under one section of the subchapter. Section 22.258 is added to consolidate discontinuation of eligibility or non-eligibility under one section of the subchapter. Section 22.259 is added to consolidate hardship provisions under one section of the subchapter and to add an additional circumstance for hardship consideration to align the hardships applicable to the Texas Educational Opportunity Grant Program with those described in the Toward EXcellence, Access and Success Grant Program. Section 22.260 is added to consolidate priorities in awarding under one section of the subchapter. Section 22.261 is added to consolidate grant amounts and adjustments under one section of the subchapter.

The amendments eliminate redundancy between Subchapter M and Subchapter A (relating to General Provisions), apply consistent terminology throughout the rules, and remove outdated references. Section 22.253 is amended to clarify references in the text. Section 22.254 is amended to remove sixteen definitions that are either not used in the subchapter or are already defined in Subchapter A, §22.1. In addition, the definition for "Initial Year Award" is amended to allow for summer grants, and the terms "Continuation Award" and "Grant" are added and defined to provide further clarification to this rule. Section 22.255(a) is amended to align with statute, §22.255(b) is amended to align with changes in the timing of the allocation process, and §22.255(c) is amended to remove material that appears in subchapter A (relating to General Provisions). Section 22.256 is amended to provide greater clarity and to remove items that have been consolidated into other sections of the subchapter or that appear in Subchapter A (relating to General Provisions).

The following comment was received within the public comment period:

COMMENT: Delmar College commented in favor of the additional circumstances for hardship consideration. Further comments advised of his appreciation of the opportunity to help students that have very difficult circumstances that occur, with completing their education. Life events that happen cause students to almost lose hope, but with these type of provisions students just need a second chance and these additional circumstances allow for that. Delmar College extended sincerest thanks to the THECB for advocating for student success and completion.

STAFF RESPONSE: Staff agrees with the comment.

The amendments and new rules are adopted under the Texas Education Code, §56.403, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas Educational Opportunity Grant Program.

The adopted amendments and new rules affect Texas Education Code, Chapter 56, Subchapter P.

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

Filed with the Office of the Secretary of State on July 14, 2020.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



19 TAC §§22.257 - 22.261, 22.263

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Chapter 22, Subchapter M, §§22.257 - 22.261 and §22.263 of Board rules, concerning Texas Educational Opportunity Grant, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 845). The rules will not be republished.

Sections 22.257 - 22.260 are repealed to remove information that is being consolidated in new sections. Specifically, §22.261 and §22.263 are repealed to remove material that appears in subchapter A (relating to General Provisions).

The following comment was received within the public comment period.

COMMENT: Delmar College commented in favor of the additional circumstances for hardship consideration. Further comments advised of his appreciation of the opportunity to help students that have very difficult circumstances that occur, with completing their education. Life events that happen cause students to almost lose hope, but with these type of provisions students just need a second chance and these additional circumstances allow for that. Delmar College extended sincerest thanks to the THECB for advocating for student success and completion.

STAFF RESPONSE: Staff agrees with the comment.

The repeal is adopted under the Texas Education Code, §56.403, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas Educational Opportunity Grant Program.

The adopted repeal affects Texas Education Code, Chapter 56, Subchapter P.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



SUBCHAPTER X. TEACH FOR TEXAS CONDITIONAL GRANT PROGRAM

19 TAC §§22.625, 22.626, 22.631

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Chapter 22, Subchapter X, §§22.625, 22.626, and 22.631, concerning the Teach for Texas Conditional Grant Program, without changes as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 846) and will not be republished.

The amendment to §22.625 updates the legislative reference to reflect the specific citation of the Texas Education Code section regarding the authority for these provisions and removes unnecessary language. The amendment to §22.626 concerning "Definitions" strikes the terms "Academic period," "Board," "Commissioner," "Eligible Institution," "Enrolled for at least a three-quarter time," "Enrolled at least half time," and "Satisfactory Academic Progress" from the rule. These terms are either not used in the subchapter or are already defined in Subchapter A, §22.1. Section 22.631 of the rule is amended to reflect the hardship provisions that are applicable to fulfillment of the service obligation.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §56.359, which provides direction regarding the treatment of grant recipients who entered the conditional grant program before it was converted to a loan repayment assistance program, and §56.3575, which provides the Coordinating Board with the authority to adopt rules for administration of Texas Education Code, Chapter 56, Subchapter O.

The adopted amendments affect Texas Education Code, §56.359.

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

Filed with the Office of the Secretary of State on July 14, 2020.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



19 TAC §§22.627 - 22.630, 22.632, 22.642, 22.643

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Chapter 22, Subchapter X, §§22.627-22.630, 22.632, 22.642 and 22.643, concerning

Teach for Texas Conditional Grant Program, without changes as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 847) and will not be republished.

Specifically, since the Board is no longer issuing new conditional grants under the Teach for Texas Conditional Grant Program, §§22.627-22.630, 22.632, 22.642 and 22.643 are no longer required and are obsolete.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §56.359, which provides direction regarding the treatment of grant recipients who entered the conditional grant program before it was converted to a loan repayment assistance program, and §56.3575, which provides the Coordinating Board with the authority to adopt rules for administration of Texas Education Code, Chapter 56, Subchapter O.

The adopted repeal affects Texas Education Code, §56.359.

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

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202002904

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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Proposal publication date: February 7, 2020

For further information, please call: (512) 427-6365



SUBCHAPTER Y. TEACH FOR TEXAS ALTERNATIVE CERTIFICATION CONDITIONAL GRANT PROGRAM

19 TAC §§22.663, 22.664, 22.668

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Chapter 22, Subchapter Y, §§22.663, 22.664, and 22.668, concerning the Teach for Texas Alternative Certification Conditional Grant Program, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 848). The rules will not be republished.

The amendment to §22.663 updates the legislative reference to reflect the specific citation of the Texas Education Code section regarding the authority for these provisions and removes unnecessary language. The amendment to §22.664 concerning "Definitions" strikes the terms "Board," "Certification officer," "Commissioner," and "Program officer" from the rule. These terms are either not used in the subchapter or are already defined in Subchapter A, §22.1. Section 22.664(4) is amended to reflect the correct citation for the definition of the term "Good cause," which is defined within Chapter 22, Subchapter X, Teach for Texas Conditional Grant Program. Section 22.668 of the rule is amended to reflect the hardship provisions that are applicable to the service obligation requirements.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §56.359, which provides direction regarding the treatment of grant recipients who entered the conditional grant program before it was converted to a loan repayment assistance program, and §56.3575, which provides the Coordinating Board with the authority to adopt rules for administration of Texas Education Code, Chapter 56, Subchapter O.

The adopted amendments affect Texas Education Code, §56.359.

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

Filed with the Office of the Secretary of State on July 14, 2020.

TRD-202002905

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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Proposal publication date: February 7, 2020

For further information, please call: (512) 427-6365



19 TAC §§22.665 - 22.667, 22.669, 22.678, 22.679

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Chapter 22, Subchapter Y, §§22.665 - 22.667, 22.669, 22.678, and 22.679, concerning Teach for Texas Alternative Certification Conditional Grant Program, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 849). The rules will not be republished.

Specifically, since the Board is no longer issuing new conditional grants under the Teach for Texas Alternative Certification Conditional Grant Program, §§22.665 - 22.667, 22.669, 22.678, and 22.679 are no longer required and are obsolete.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §56.359, which provides direction regarding the treatment of grant recipients who entered the conditional grant program before it was converted to a loan repayment assistance program, and §56.3575, which provides the Coordinating Board with the authority to adopt rules for administration of Texas Education Code, Chapter 56, Subchapter O.

The adopted repeal affects Texas Education Code, §56.359.

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

Filed with the Office of the Secretary of State on July 14, 2020.

TRD-202002906

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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Proposal publication date: February 7, 2020

For further information, please call: (512) 427-6365



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER B. TEXAS EDUCATION AGENCY AUDIT FUNCTIONS

19 TAC §109.23

The State Board of Education (SBOE) adopts an amendment to §109.23, concerning school district independent audits and agreed-upon procedures. The amendment is adopted without changes to the proposed text as published in the May 22, 2020 issue of the *Texas Register* (45 TexReg 3422) and will not be republished. The adopted amendment reflects changes made by House Bill (HB) 1520, 86th Texas Legislature, 2019, that eliminated the requirement for out-of-state certified public accountancy (CPA) firms to be licensed in Texas.

REASONED JUSTIFICATION: HB 1520, 86th Texas Legislature, 2019, updated Texas Occupations Code, §901.461, to eliminate the requirement for out-of-state CPA firms to be licensed in Texas. The amended statute took effect September 1, 2019.

The adopted amendment to §109.23 reflects the changes to Texas Occupations Code, §901.461. Subsection (d)(1)(A) was modified to allow an independent auditor hired by a school district to be associated with a CPA firm that has a current valid license issued by a state licensing agency from another state.

The SBOE approved the proposed amendment for first reading and filing authorization at its April 17, 2020 meeting and for second reading and final adoption at its July 2, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will align the rule with statutory changes in a timely manner. The effective date is August 31, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 22, 2020, and ended June 26, 2020. The SBOE also provided an opportunity for registered oral and written comments at its June-July 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.102(c)(32), which authorizes the State Board of Education (SBOE) to adopt rules concerning school district fiscal account audits and budgets; TEC, §44.001, which requires each school district to begin its fiscal year on July 1 or September 1 of each year, as determined by the board of trustees of the district; TEC, §44.007, which requires each school district to annually submit to Texas Education Agency (TEA) a report of its revenues and expenditures for the preceding fiscal year and authorizes the SBOE to prescribe the management, cost accounting, and financial information format to enable the board to monitor the funding process and determine educational system costs; TEC, §44.008, which authorizes the SBOE to establish the format and minimum requirements of the independent audit of school district fiscal accounts; and TEC, §44.010, which requires the school district budgets, fiscal reports, and audit reports filed with TEA to be reviewed and analyzed by TEA to determine whether all legal requirements have

been met and to collect fiscal data needed in preparing school fiscal reports for the governor and the legislature.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.102(c)(32), 44.001, 44.007, 44.008, and 44.010.

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

Filed with the Office of the Secretary of State on July 20, 2020.

TRD-202002961

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 31, 2020

Proposal publication date: May 22, 2020

For further information, please call: (512) 475-1497



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

The State Board for Educator Certification (SBEC) adopts amendments to §§232.1, 232.5, 232.7, 232.9, 232.15, 232.17, 232.19, 232.21, 232.31, and 232.35; the repeal of §§232.3, 232.11, 232.13, 232.23, and 232.25; and new §232.11 and §232.16, concerning general certification provisions. The revisions are adopted without changes to the text as published in the March 20, 2020 issue of the *Texas Register* (45 TexReg 1925) and will not be republished.

The adopted revisions implement the statutory requirements of House Bills (HBs) 18 and 403 and Senate Bills (SBs) 11 and 37, 86th Texas Legislature, 2019. The adopted revisions provide continuing professional education (CPE) instruction regarding mental health and substance abuse training; training requirements for superintendents regarding sexual abuse and human trafficking; and the removal of student loan default as grounds to deny the renewal of a certificate. Technical changes also clarify processes and reorganize current provisions to improve readability and align citations.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in Title 19 Texas Administrative Code (TAC) Chapter 232 are organized as follows: Subchapter A, Certificate Renewal and Continuing Professional Education Requirements, and Subchapter B, National Criminal History Record Information Review of Active Certificate Holders. These subchapters provide for rules that establish the requirements relating to types and classes of certificates issued, certificate renewal, CPE, and national criminal history record information review.

There were several pieces of SBEC-related legislation regarding CPE as a result of the 86th Texas Legislature, 2019. To ensure aligned implementation of these bills for SBEC's consideration, Texas Education Agency (TEA) staff collaborated with other agency staff in the divisions of Special Populations and Special Education throughout the month of October 2019 and conducted a stakeholder meeting on October 24, 2019.

In addition to the following detailed descriptions that incorporates the 2019 enabling legislation, the adopted revisions remove outdated provisions; include technical edits to remove duplicity; provide technical clean-up and formatting edits for clarifications; and provide relettering/renumbering to conform with the *Texas Register* style and formatting requirements.

Subchapter A. Certificate Renewal and Continuing Professional Education Requirements.

§232.1. General Provisions.

The adopted amendment in §232.1(d) strikes the phrase, "The SBEC may deny renewal if the" and adds the phrase, "An educator may not renew a certificate if the individual," to clarify that SBEC rules determine compliance for certificate renewal purposes.

The adopted amendment in §232.1(e) deletes the provision related to deadlines and fees for certificate renewals, as it is duplicative since it appears in other sections of the chapter.

The adopted amendment in §232.1(f) deletes the provision to comply with SB 37, 86th Texas Legislature, 2019, which prohibits the use of student loan default as grounds to deny the issuance or renewal of an educator certificate.

The adopted amendment in §232.1(g) deletes the provisions related to failure to pay child support as grounds to deny or cancel the renewal of a certificate as it is already covered in §232.7(c).

The adopted amendment in §232.1(h) deletes the provisions related to the reissuance of a Texas lifetime certificate surrendered in lieu of revocation or revoked as certificates are not reissued. If certificates are surrendered or revoked, a new application must be submitted, pursuant to Chapter 230, Professional Educator Preparation and Certification.

Rellettered §232.1(e) is adopted with an amendment to write out "Texas Education Code" for technical formatting purposes.

§232.3. Voluntary Renewal of Current Texas Educators.

Section 232.3 was repealed as it is strictly voluntary and not enforceable.

§232.5. Renewal Date for Certificates.

Language in former §232.5(c) that contained the provision relating to educational aide certificate holders qualifying for standard certificate is deleted. Educational aide certificates can no longer be renewed and; therefore, the expiration date of an individual who qualifies for a standard certificate would not be affected by an educational aide certificate date.

Relettered §232.5(c)-(e) is adopted for technical formatting purposes.

§232.7. Requirements for Certificate Renewal.

The adopted amendment in §232.7(a)(4) strikes the reference to paragraphs (2)-(6) to clarify all provisions in subsection (c) are required to be eligible for renewal.

The adopted amendment in §232.7(b)(4) strikes the phrase, "§232.25 of this title (relating to Fees Payable Upon Certificate Renewal or Reactivation)," and replaces it with the phrase "§230.101 of this title (relating to Schedule of Fees for Certification Services)," to properly cross-reference the rule chapter regarding fees paid for certification purposes.

The adopted amendment in §232.7(c)(1) provides a technical edit to align renewal requirements with the new provisions in §232.16(c).

The adopted amendment in §232.7(c)(5) deletes the provision to comply with SB 37, 86th Texas Legislature, 2019, which prohibits the use of student loan default as grounds to deny the issuance or renewal of an educator certificate.

The adopted amendment in §232.7(c)(6) strikes the phrase, "pursuant to §232.25 of this title," and replaces it with the phrase, "provided in §230.101 of this title," to properly cross-reference the rule chapter regarding fees paid for certification purposes.

The adopted amendment in §232.7(c) includes renumbering the provisions to paragraphs (5)-(7) for technical formatting purposes.

§232.9. Inactive Status and Late Renewal.

The adopted amendment in §232.9(b) strikes the phrases, "no more than six months" and "and also pay a reactivation fee," regarding the additional payment of a reactivation fee if renewal is longer than six months, as this does not align with practice and the language is in contradiction to §230.101, which prescribes that a reactivation fee cannot be incurred for late renewal purposes.

The adopted amendment deletes §232.9(d) to move this provision regarding auditing compliance with renewal requirements to adopted new §232.16, Verification of Renewal Requirements.

§232.11. Number and Content of Required Continuing Professional Education Hours

Sections 232.11, Number and Content of Required Continuing Professional Education Hours, and 232.13, Number of Required Continuing Professional Education Hours by Classes of Certificates, are repealed to combine and organize these sections in adopted new §232.11, which maintains its former section title, for organizational purposes. Adopted new §232.11 reorganizes current requirements for CPE training by each certificate class; removes duplicative language; and implements recent legislation. These changes provide greater readability and distinguish the requirements of professional development for each certificate class.

Adopted new §232.11(a), (b), and (c) reflect current requirements regarding clock-hours, the renewal period, and the focus of professional development on the standards required for issuance of certificate(s).

Adopted new §232.11(d) maintains the current CPE requirements for classroom teachers to complete 150 hours of CPE for renewal every five years. Adopted new §232.11(d)(2) complies with HB 18 and SB 11, 86th Texas Legislature, 2019, that requires a minimum of 25% (37.5 hours) of total CPE hours in specific instructional areas, where two or more topics can be combined; elaborates on diverse student populations to include those in special education programs who receive services under the Rehabilitation Act of 1973, Section 504, students with mental health conditions or who engage in substance abuse, and students with intellectual or developmental disabilities; and includes how mental health conditions, including grief and trauma, affect student learning and behavior, with specific training requirements pursuant to TEC, §38.036(c)(1), and approved by the commissioner of education.

Adopted new §232.11(e) maintains the current CPE requirements for principals and adds the requirement that a principal

as instructional leader complete 200 hours of CPE for renewal every five years. Adopted new §232.11(e)(2) complies with HB 18, 86th Texas Legislature, 2019, that requires a minimum of 25% (50 hours) of total CPE hours in specific instructional areas; includes effective implementation of the Texas Model for Comprehensive School Counseling Programs; includes mental health programs addressing mental health conditions; elaborates on diverse student populations to include those in special education programs who receive services under the Rehabilitation Act of 1973, Section 504, students with mental health conditions or who engage in substance abuse, and students with intellectual or developmental disabilities; and includes how mental health conditions, including grief and trauma, affect student learning and behavior, with specific training requirements that are based on relevant best practice-based and research-based programs that are approved by the commissioner.

Adopted new §232.11(f) maintains the current CPE requirements for school counselors to complete 200 hours of CPE for renewal every five years. Adopted new §232.11(f)(2) complies with HB 18, 86th Texas Legislature, 2019, that requires a minimum of 25% (50 hours) of total CPE hours in specific instructional areas; includes counseling students concerning mental health conditions and substance abuse, including through the use of grief-informed and trauma-informed interventions and crisis management and suicide prevention strategies; and includes effective implementation of the Texas Model for Comprehensive School Counseling Programs.

Adopted new §232.11(g) maintains the current CPE requirements for superintendents to complete 200 hours of CPE for renewal every five years. Adopted new §232.11(g)(2) complies with HB 403, 86th Texas Legislature, 2019, that requires individuals who hold a superintendent certificate that is renewed on or after January 1, 2021, to complete at least 2.5 hours of CPE on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children.

Adopted new §232.11(h)-(j) maintains the current CPE requirements for school librarians and learning resources specialists, educational diagnosticians, and reading specialists to complete 200 hours of CPE for renewal every five years.

Adopted new §232.11(k) maintains the current CPE requirements for educators who teach students with dyslexia.

Adopted new §232.11(l) maintains the current CPE optional activities for educators. To comply with HB 18, training in mental health first aid training must be through a classroom setting with in-person attendance, and the educator will obtain twice the number of hours, not to exceed 16 hours.

Adopted new §232.11(m) and (n) maintains the current provisions regarding renewal requirements for educators who hold multiple classes of certificates.

§232.15. Types of Acceptable Continuing Professional Education Activities.

The adopted amendment in §232.15(a)(1) and (2) strikes the phrase, "in content area knowledge and skills related to the certificate(s) being renewed," to provide clarity because some of the statutory requirements for CPE are not directly related to content area knowledge and skills.

The adopted amendment in §232.15(a)(4) strikes the phrase, "subsection or subsection (b) of this," to provide clarity that the phrase refers to the entire section.

§232.16. Verification of Renewal Requirements.

Adopted new §232.16(a), (b), and (d) maintain the current provisions in §232.23 regarding the verification of CPE requirements for educators to provide clarity and readability for educators. The adopted amendment in §232.16(b) provides a technical edit to align verification requirements with adopted new §232.16(c). Adopted new §232.16(c) provides clarity to educators that they are not required to satisfy CPE requirements that are implemented within one year prior to the renewal date. This provides educators with adequate time to comply with any new CPE requirements for renewal purposes.

§232.17. Pre-Approved Continuing Professional Education Provider or Sponsor.

The adopted amendment in §232.17 adds the word "Continuing" to the section title to clarify that the pre-approved providers or sponsors are for CPE purposes.

The adopted amendment in §232.17(a) adds the word "entities" as a clear descriptor of the providers listed in paragraphs (1)-(4) and to match the descriptor in subsection (b). The amendment also removes the word "Registration" to align the cross-reference to the adopted change to the section title of §232.21.

§232.19. Approval of Private Companies, Private Entities, and Individuals as Continuing Professional Education Providers.

The adopted amendment in §232.19 adds the phrase, "as Continuing Professional Education Providers," to the section title to clarify the approval of these entities is for the purpose of providing continuing education training.

The adopted amendment in §232.19 clarifies that entities seeking approval to apply for registration as a CPE provider must comply with the provisions set out in §232.21 regarding provider requirements. The adopted amendment in §232.19(1) maintains the current requirements for CPE provider approval in §232.21. These provisions have been reorganized into this section to reflect application provisions for CPE providers, which is only applicable to entities not pre-approved.

§232.21. Provider Requirements.

The adopted amendment in §232.21 strikes the word "Registration" in the section title to clarify the provider requirements are for pre-approved providers and entities that must apply for registration as CPE providers. This section maintains the current requirements for CPE providers and reorganizes the section for readability and clarity.

The adopted amendment in §232.21(a)(5) deletes the provision related to a CPE provider conducting a self-study due to vagueness and lack of enforceability of the provision.

The adopted amendment in §232.21(f) changes the reference from "section" to "chapter" to clarify that it applies to related provisions in Chapter 232.

§232.23. Verification of Renewal Requirements.

Section 232.23 is repealed as it has been reorganized as §232.16 to move these provisions earlier in the chapter for readability.

§232.25. Fees Payable Upon Certificate Renewal or Reactivation.

Section 232.25 is repealed as it contradicts provisions in §230.101 regarding the schedule of fees for certification services.

Subchapter B. National Criminal History Record Information Review of Active Certificate Holders.

§232.31. Purpose.

The adopted amendment in §232.31(b)(4) adds a definition for *pre-enrollment* to provide clarification of the process for TEA to transmit identifiable information to the Texas Department of Public Safety (DPS) fingerprinting vendor for individuals to schedule a fingerprinting appointment.

The adopted amendment in §232.31(b) includes renumbering the provisions to paragraphs (5) and (6) for technical formatting purposes.

§232.35. Submission of Required Information.

The adopted amendment in §232.35(a)(1) strikes the phrase, "mailing addresses," to clarify TEA does not require the mailing addresses of educators from the school district for the purposes of fingerprinting.

The adopted amendment in §232.35(a)(3) clarifies that TEA staff uses the identifiable information to return fingerprinting statuses to the school entity and to the DPS or its vendor to pre-enroll educators for the purpose of a national criminal history record information review.

The adopted amendment in §232.35(a)(4) strikes the phrase, "after it submits the names of all its certified educators to the TEA staff," to clarify the process used for educators to submit the required information and adds clarification of the provisions in 19 TAC §230.11(b)(2) or 19 TAC Chapter 153, Subchapter DD, for cross-reference purposes.

The adopted amendment deletes §232.35(b)(3)-(5) to align with current practice of the school districts and TEA no longer performing these activities as they are no longer relevant given all new educators must submit a criminal background check. These rules were put in place originally to provide criminal background checks on all current educators prior to the requirement that all educators applying for certification be fingerprinted.

The adopted amendment in §232.35(c)(1) strikes the phrase, "and shall electronically obtain an authorization form from the TEA staff," to clarify procedures that this practice is not required given updates to the technical process of submissions.

The adopted amendment deletes former §232.35(c)(2) as the process in that provision is no longer used given all new educators must submit a criminal background check.

The adopted amendment in §232.35(c) includes renumbering the provision to paragraph (2) for technical formatting purposes.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 20, 2020, and ended April 20, 2020. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the May 1, 2020 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: Thirteen individuals commented in support of proposed §232.11(e)(2)(D) and (f)(2)(E), which would include training on the Texas Model for Comprehensive School Counseling Programs as a CPE requirement for principals and school counselors. The commenters cited the benefits of counselors receiving CPE in mental health aid, coping strategy development, and the social and emotional needs of students.

Response: Agree. The adopted revision reflects a change in the law from HB 18, 86th Texas Legislature, 2019, which requires individuals renewing a principal or counselor certificate to receive training on the effective implementation of the Texas Model for Comprehensive School Counseling Program.

Comment: Seventeen individuals commented in support of proposed §232.1(f) and §232.7(c)(5), which would strike the rule related to denial of certificate renewal due to student loan default. The commenters cited the benefit to educators in not losing their jobs due to inability to pay back student loans.

Response: Agree. The adopted revision reflects a change in the law from SB 37, 86th Texas Legislature, 2019, which prohibits the use of student loan default as grounds to deny the renewal of an educator certificate.

Comment: An individual commented in opposition of proposed §232.1(f) and §232.7(c)(5), which would strike the rule related to denial of certificate renewal due to student loan default. The commenter argued that the rule would punish educators who cannot pay back their student loans by taking away their livelihood is insane.

Response: Disagree. TEA staff believe the commenter is confused and offers the following clarification, which is in agreement with the individual's comments. The adopted revision reflects a change in the law from SB 37, 86th Texas Legislature, 2019, which prohibits the use of student loan default as grounds to deny the renewal of an educator certificate.

Comment: An individual suggested that counselors receive certifications in dealing with students coping with anxiety, depression, and other mental health conditions. The commenter stated that these certifications would be similar to the certifications already available to educators in English as a second language or gifted and talented. The commenter argued that counselors are likely the only option for a student coping with mental health conditions, and therefore, they need specified training in these areas to best provide services to students. The commenter requested separate CPE requirements for counselors to give them specific training in mental health conditions like anxiety and suicidal ideation that they confront frequently in the children they serve. Additionally, the commenter recommended legislation that grants additional funding to schools for hiring counselors to operate at the recommended American School Counselor Association (ASCA) ratio of 1:250.

Response: The comment is outside the scope of the proposed rulemaking. The TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: Educate Texas commented in support of the changes to proposed §232.1(f) and (g) as the changes would streamline the rule by removing student loan default or child support arrearages as reasons for denial of certification. Educate Texas also praised the change to proposed §232.1(h) that would provide clarification that when certificates are surrendered, a new application must be submitted. Educate Texas also supports proposed §232.15 that would allow educators to expand the type of CPE offerings.

Educate Texas supports the transition period for new CPE requirements for renewal purposes in proposed §232.16(c) but suggested to increase accountability for educators outside of the random audits performed as prescribed in SBEC rule. Educate Texas also suggested that TEA increase its role in evaluating the effectiveness and relevance of CPE providers in proposed

§232.19 and §232.21, as well as considering a CPE provider renewal process that captures the focus of their trainings and alignment with Texas Teacher Evaluation and Support System (T-TESS) domains to provide information about the value of each provider.

Finally, Educate Texas requested information about the provisions in place for charter schools or non-certified teachers that have committed a lawful infraction. Specifically, Educate Texas asked if TEA has the authority to revoke teaching employment of such educators in Texas schools.

Response: Regarding the commenter's support for adopted §232.1(h) regarding reissuance of surrendered certificates and adopted §232.15 regarding the expansion of CPE choices for educators, SBEC agrees.

Regarding the commenters request for increased accountability for CPE requirements in proposed §232.16(c) and for CPE providers in proposed §232.19 and §232.21, the comments are outside the scope of the proposed rulemaking. The TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Regarding the request for information related to revoking teaching employment for charter schools or non-certified teachers, the comments are outside the scope of the proposed rulemaking but the TEA staff provides the following clarification. SBEC has the authority to revoke the certification of any educator who commits a revocation-worthy offense, regardless of where the educator is working. Moreover, TEC, §22.0832 and §22.0833, and 19 TAC Chapter 153, Subchapter DD, require that charter schools and public school districts fingerprint all employees. Additionally, TEC, §22.085, requires schools to discharge an individual from employment if he or she is convicted or placed on deferred adjudication for an offense requiring the person to register as a sex offender, or convicted of a felony under Texas Penal Code, Title V, Offenses Against the Person, where the victim was under 19. Finally, the 86th Texas Legislature passed HB 3 to further protect the safety and welfare of Texas students by requiring schools to report to TEA when there is evidence that a non-certified employee abused or was involved in an inappropriate relationship with a student or minor and creating a registry of individuals who are not eligible for hire in a Texas public school based on misconduct or criminal history.

The "Do Not Hire Registry" is now available to public and private schools through Texas Education Agency Login (TEAL) and also to the public through the TEA website.

The State Board of Education (SBOE) took no action on the review of amendments to §§232.1, 232.5, 232.7, 232.9, 232.15, 232.17, 232.19, 232.21, 232.31, and 232.35; the repeal of §§232.3, 232.11, 232.13, 232.23, and 232.25; and new §232.11 and §232.16, at the July 2, 2020 SBOE meeting.

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §§232.1, 232.5, 232.7, 232.9, 232.11, 232.15, 232.16, 232.17, 232.19, 232.21

STATUTORY AUTHORITY. The amendments and new sections are adopted under Texas Education Code (TEC), §21.003(a),

which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, as amended by SB 11 and HBs 18, 403, and 2424, 86th Texas Legislature, 2019, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator; TEC, §21.0543, which requires the SBEC to propose rules that provide for continuing professional education (CPE) credit related to digital technology instruction; Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement Texas Education Code, §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054, as amended by Senate Bill 11 and House Bills 18, 403, and 2424, 86th Texas Legislature, 2019; 21.0541; and 21.0543; and Texas Occupations Code, §55.002 and §55.003.

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

Filed with the Office of the Secretary of State on July 17, 2020.
TRD-202002950

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: August 6, 2020
Proposal publication date: March 20, 2020
For further information, please call: (512) 475-1497



19 TAC §§232.3, 232.11, 232.13, 232.23, 232.25

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, as amended by Senate Bill 11 and House Bills 18, 403, and 2424, 86th Texas Legislature, 2019, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator; TEC, §21.0543, which requires the SBEC to propose rules that provide for continuing professional education (CPE) credit related to digital technology instruction; Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§21.003(a); 21.0031(f); 21.031;

21.041(b)(1)-(4) and (7)-(9); 21.054, as amended by Senate Bill 11 and House Bills 18, 403, and 2424, 86th Texas Legislature, 2019; 21.0541; and 21.0543; and Texas Occupations Code, §55.002 and §55.003.

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

Filed with the Office of the Secretary of State on July 17, 2020.

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Cristina De La Fuente-Valadez
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State Board for Educator Certification
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SUBCHAPTER B. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW OF ACTIVE CERTIFICATE HOLDERS

19 TAC §232.31, §232.35

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.041(c), which states the State Board for Educator Certification (SBEC) may adopt fees for the issuance and maintenance of an educator certification to adequately cover the cost of the administration; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §21.041(c) and §22.0831(f)(1) and (2).

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

Filed with the Office of the Secretary of State on July 17, 2020.

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, concerning Qualified Accounting Course, without changes to the proposed text as published in the May 29, 2020, issue of the *Texas Register* (45 TexReg 3610). The rule will not be republished.

The amendment to §511.57 eliminates the requirement that an applicant to take the CPA exam be required to have 15 hours of in-person classroom instruction.

One comment was received regarding adoption of the amendment in agreement with the Board's amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on July 16, 2020.

TRD-202002934

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: August 5, 2020

Proposal publication date: May 29, 2020

For further information, please call: (512) 305-7842



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§116.110, 116.116, 116.710, and 116.721; and new §116.118.

The amendments to §§116.110, 116.116, 116.710, and 116.721; and new §116.118 are adopted *without changes* to the proposed text as published in the February 14, 2020, issue of the *Texas Register* (45 TexReg 989) and, therefore, will not be republished.

The adopted new and amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking revises Chapter 116 to implement provisions of House Bill (HB) 2726, 86th Texas Legislature, 2019. This legislation revised Texas Health and Safety Code (THSC), §382.004, Construction While Permit Application Pending, to allow an applicant for a permit amendment to begin construction after the executive director has issued a draft permit including

the permit amendment. Traditionally, the permit applicant would have to wait to begin construction until the final permit is issued. The decision to begin construction is at the applicant's own risk, and the statute does not allow the commission to consider construction begun under THSC, §382.004 as a factor when determining whether to issue the amendment sought by the applicant. In addition, the statute does not allow for any construction which is prohibited by federal law. HB 2726 also added a restriction to THSC, §382.004 which prohibits the use of this option for early construction at concrete batch plants located within 880 yards of a property used as a residence. As stated in HB 2726, Section 2, the amended provisions of THSC, §382.004, which allows the applicant to begin construction when the draft permit amendment is issued, only apply to permit amendment applications filed with the TCEQ on or after January 1, 2020.

As revised by HB 2726, THSC, §382.004 allows a person who submits a permit amendment application to begin construction after the executive director has issued a draft permit including the permit amendment. In accordance with THSC, §382.056(f), the executive director must conduct a technical review of and issue a preliminary decision on a permit application. During the technical review of a permit amendment application, the executive director's staff reviews the application to determine whether it satisfies state and federal regulatory requirements. The permit reviewer evaluates the emission sources and proposed emission rates and confirms that the applicant has proposed air pollution controls which represent, at a minimum, best available control technology (BACT). The permit reviewer also reviews the proposed emissions to verify that public health will be protected and that applicable air quality standards (such as National Ambient Air Quality Standards or NAAQS) will be met. The applicant's air pollution control review, along with the permit reviewer's air pollution control evaluation and final recommendation provide a record that demonstrates that the operation of a proposed facility or related source will not cause or contribute to a condition of air pollution and will comply with all applicable federal regulations and state rules. Once the technical review is complete, by rule (30 TAC §39.419) the executive director files the preliminary decision and draft permit with the commission's chief clerk with instructions for the applicant to publish a Notice of Application and Preliminary Decision (NAPD) in the same newspaper that published the Notice of Receipt of Application and Intent to Obtain a Permit. By allowing construction to begin only after the technical review of the application is complete and the draft permit has been issued, the adopted rulemaking ensures that critical components of the permit review, including the determination of BACT, the review of applicable state distance limitations, and the protectiveness review to evaluate health effects and compliance with applicable air quality standards, have been completed.

In addition to the specific requirements of the legislation and statute, the commission adopts certain amendments to Chapter 116 which are necessary for the adopted rulemaking to obtain approval from the EPA as a revision to the Texas SIP. The commission's new source review (NSR) permitting rules for both minor and major sources are approved by the EPA into the SIP. State NSR programs approved by the EPA generally provide for preconstruction authorization in order to meet requirements of 40 Code of Federal Regulations (CFR) Part 51. However, states are given substantial latitude in crafting minor source preconstruction permitting programs that are also established under state law, such as is the case for Texas. Major NSR (both Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR)) rules in Chapter 116

are approved by the EPA as meeting the requirements of the Federal Clean Air Act (FCAA) and federal regulations. The EPA has approved other states' rules which allow the beginning of construction prior to permit issuance where those rules applied only to minor sources and specifically excluded major NSR sources and other federally authorized sources (See for example Mississippi's rules approved July 10, 2006, 71 FR 38773). The additional adopted amendments exclude certain permit actions from beginning construction under new §116.118 because it is not "permissible under federal law" and are discussed in more detail in the Section by Section Discussion portion of this preamble.

The adopted rulemaking also includes minor revisions to certain other rule sections in Chapter 116 to add cross-references to the adopted new §116.118 rules where necessary or appropriate.

Certain rule sections in Chapter 116, Subchapter H relating to grandfathered facilities which would otherwise be affected by the provisions of THSC, §382.004 were not included for revision in this rulemaking because those sections are planned for repeal in a separate rulemaking action (Rule Project Number 2020-001-116-AI) to implement the findings of a rules review conducted pursuant to Texas Government Code, §2001.039.

Section by Section Discussion

The commission adopts various stylistic changes, such as grammatical or reference corrections. These changes are non-substantive and are not specifically discussed in this preamble.

§116.110, Applicability

The commission adopts amended §116.110(a) to add a reference to adopted new §116.118 which implements HB 2726 and THSC, §382.004. The adopted change is necessary because the current rule language in §116.110(a) does not reflect the option under THSC, §382.004 to begin construction when the draft permit is issued.

§116.116, Changes to Facilities

The commission adopts amended §116.116(b)(1) and (2) to add a reference to adopted new §116.118 which implements HB 2726 and THSC, §382.004. The adopted change is necessary because the current rule language in §116.116(b)(1) and (2) does not reflect the option under THSC, §382.004 to begin construction when the draft permit is issued.

The commission also adopts amended §116.116(e)(3) and (f) to replace the term "notwithstanding" with the phrase "regardless of." This adopted change improves readability of the rule through the use of plain language.

§116.118, Construction While Permit Amendment Application Pending

The commission adopts new §116.118, which contains the technical and administrative requirements which are required for permit applicants seeking to begin construction under THSC, §382.004.

Adopted new §116.118(a) contains conditions relating to the purpose and applicability of the section, and certain exclusions. Adopted new §116.118(a)(1) explains that an applicant for a permit amendment may begin construction, at their own risk, after the executive director has completed the technical review and issued a draft permit. For purposes of clarification, a draft permit is deemed to be issued on the date when the TCEQ Chief

Clerk mails the preliminary decision and the NAPD, as required by §39.419.

Adopted new §116.118(a)(2) codifies the statutory requirement in THSC, §382.004(c) which excludes certain concrete batch plant facilities from being eligible to begin construction under §116.118. Specifically, any concrete batch plant facility located within 880 yards of a property that is used as a residence is not eligible to begin construction under THSC, §382.004 or adopted new §116.118.

Adopted new §116.118(a)(3) specifies that projects which trigger federal PSD or federal NNSR permitting are not eligible to begin construction under adopted new §116.118. THSC, §382.004 only authorizes construction to the extent permissible under federal law, and federal regulations governing the PSD and NNSR programs do not allow construction to begin before the permit is issued. These conditions relating to permitting of major sources and major modifications are necessary for the adopted rulemaking to be approved by the EPA as a revision to the Texas SIP.

Adopted new §116.118(a)(4) specifies that this section does not apply to the amendment of a Plant-wide Applicability Limit (PAL) issued under Chapter 116, Subchapter C (Plant-wide Applicability Limits). A PAL is not a substitute for, or an exemption from, preconstruction NSR requirements of Chapter 116, Subchapter B (New Source Review Permits) or Subchapter G (Flexible Permits). A PAL establishes a pollutant-specific annual emissions level below which new and modified facilities will not be subject to major NSR for that pollutant. The commission's PAL rules are approved as part of the SIP to meet federal PAL requirements.

Adopted new §116.118(a)(5) specifies that projects which trigger requirements for a case-by-case determination of maximum achievable control technology under FCAA, §112(g) are not eligible to begin construction under adopted new §116.118. THSC, §382.004 authorizes construction only to the extent permissible under federal law, and federal regulations governing the permitting of major sources of hazardous air pollutants do not allow construction to begin before the permit is issued. This condition is necessary for the adopted rulemaking to be approved by the EPA as a revision to the Texas SIP.

Adopted new §116.118(a)(6) specifies that qualified facility changes implemented under §116.116(e) are not covered by the provisions of adopted new §116.118. Qualified facility changes under §116.116(e) were authorized by Senate Bill 1126, 74th Texas Legislature, 1995, as a streamlined method for qualifying facilities to make limited changes without applying for a permit or permit amendment. Although qualified facility changes under §116.116(e) and the beginning of construction allowed under adopted new §116.118 are both streamlined methods to authorize changes to a facility, the underlying requirements and documentation are different. Therefore, it is administratively and functionally necessary to structure them as separate processes. Typically, a change which would require a traditional permit amendment would not meet the criteria to be considered a qualified facility change under §116.116(e), but there may be exceptions. If a permit holder is planning a change which could meet the requirements for a qualified facility change under §116.116(e) and also potentially qualify to begin construction under adopted new §116.118, the permit holder will need to consider which streamlined option better meets their business needs.

Adopted new §116.118(a)(7) specifies that requests, claims, registrations, or applications for a standard permit under Chapter

116, Subchapter F (Standard Permits) or a permit by rule (PBR) under 30 TAC Chapter 106 (Permits by Rule) are not eligible to begin construction under adopted new §116.118. Standard permits and permits by rule already provide a highly streamlined mechanism to authorize facilities and changes to facilities. In addition, if a PBR or standard permit is used to authorize a change at an existing permitted facility, that change is not considered a permit amendment and is not within the scope of THSC, §382.004. Therefore, the commission adopts this restriction to make it clear that the provisions of adopted new §116.118 do not apply to claims, applications, or registrations for a standard permit or PBR.

Adopted new §116.118(a)(8) specifies that adopted §116.118 does not relieve or exempt the applicant or project from any other applicable state or federal requirements; including, but not limited to, requirements for public notice and participation; federal applicability; emission control technology; and distance limitations.

Adopted new §116.118(b) specifies that applicants seeking to begin construction under the provisions of adopted §116.118 must comply with the public notice requirements of Chapter 39, as is required for all permit amendments.

Adopted new §116.118(c)(1) states that projects which meet the criteria to begin construction are still prohibited from commencing operation until the final permit amendment has been issued. Although THSC, §382.004 allows for construction in certain circumstances, it does not authorize operation of the facility and does not supersede existing requirements (such as THSC, §382.0518(f) and 30 TAC §116.115(b)(2)(B)) which do not allow for the operation of a facility until the final permit or permit amendment has been issued. In addition, the EPA has stated that rules which allow construction prior to permit issuance must include a prohibition on operation until the final permit is issued in order to obtain approval as a SIP revision.

Adopted new §116.118(c)(2) codifies the requirement in THSC, §382.004(b) that the commission may not consider construction begun under §116.118 and THSC, §382.004 as a factor in determining whether to grant the permit amendment sought in the application.

§116.710, Applicability

The commission adopts amended §116.710(a) to add a reference to adopted new §116.118 which implements HB 2726 and THSC, §382.004. The adopted change is necessary because the current rule language in §116.710(a) does not reflect the option under THSC, §382.004 to begin construction when the draft permit is issued.

§116.721, Amendments and Alterations

The commission adopts amended §116.721(a) to add a reference to adopted new §116.118 which implements HB 2726 and THSC, §382.004. The adopted change is necessary because the current rule language in §116.721(a) does not reflect the option under THSC, §382.004 to begin construction when the draft permit is issued.

The commission also adopts amended §116.721(d)(1) to replace the term "notwithstanding" with the phrase "regardless of." This adopted change improves readability of the rule through the use of plain language.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§116.110, 116.116, 116.710, and 116.721; and new §116.118 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do the new or amended rules affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this adopted rulemaking implements changes to THSC, §382.004 as enacted by passage of HB 2726.

Texas Government Code, §2001.0225 applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of federal law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §§116.110, 116.116, 116.710, and 116.721; and new §116.118 do not exceed a standard set by federal law or an express requirement of state law or a requirement of a delegation agreement and the rulemaking is not developed solely under the general powers of the agency but is authorized by THSC, §382.004. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments on the Draft Regulatory Impact Analysis Determination were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The adopted amendments to §§116.110, 116.116, 116.710, and 116.721; and new §116.118 implement changes to THSC, §382.004 as enacted by passage of HB 2726 to allow an applicant for an NSR permit amendment to begin construction, at their own risk, after the executive director has issued a preliminary decision and draft permit including the amendment. The adopted rulemaking will not burden private real property or affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this adopted rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted new and amended rules do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this adopted rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted rules will increase flexibility for applicants for certain air permit amendments, by allowing them to begin construction on a project after the draft permit has been issued. However, the permit amendment is still required to meet all applicable state and federal rules, regulations, and standards applicable to emissions of air contaminants. The adopted rules will not authorize or allow increased emissions of air contaminants. The CMP policy applicable to the adopted rulemaking is the policy that commission rules comply with federal regulations in 40 CFR to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments regarding consistency with the CMP were received.

Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking will not have a significant effect on sites which are subject to the Federal Operating Permits Program. Federal Operating Permits do not directly regulate or restrict construction. Applicants seeking to initiate construction for a permit amendment under the adopted rules must comply with any applicable requirements of Chapter 122 that would apply to any NSR permit amendment.

Public Comment

The commission offered a public hearing on March 12, 2020. The comment period closed on March 17, 2020. The commission received comments from Texas Industry Project (TIP) and Texas Oil and Gas Association (TXOGA). Both commenters supported the proposed amendments.

Response to Comments

Comment

TIP and TXOGA stated that they strongly support the rules as proposed and encouraged timely adoption of the proposed revisions.

Response

The commission appreciates the support for the rulemaking. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that delays in the issuance of final minor NSR air permits results in substantial costs to industry each year, especially in cases where a contested case hearing has been requested. TIP and TXOGA stated that, at times, challenges to minor source permits may be unfounded and/or motivated by financial interests. TIP and TXOGA stated that by allowing an applicant to begin construction at their own risk when the draft permit is issued, the proposed rules would reduce delays while still providing for a full evaluation by the TCEQ for compliance with all applicable rules and regulations; including BACT, compliance with NAAQS and state standards, good engineering practices for stack heights, and health effects guidelines. In addition, TIP and TXOGA noted that the option to begin construction early is limited to minor projects at existing sites, and that all public notice and public hearing requirements remain in place.

Response

The commission agrees that, by allowing an applicant for a permit amendment to begin construction once the draft permit is issued, the proposed rules may allow projects to be completed sooner, while still providing for the protection of human health and compliance with all other applicable rules, regulations, and standards. However, the construction is at the applicant's own risk, and the applicant may be required to make changes to the project if necessary, for final issuance of the permit amendment. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that projects which trigger federal NNSR or PSD permitting cannot use the proposed rules for early construction. The commenters noted that, as part of the permitting process, major sources must submit netting tables to demonstrate that projects with significant project emission increases qualify for the minor NSR permitting process. The commenters stated that if a project that would result in a significant emissions increase does not net out of federal permitting, the project would not be eligible to use the proposed rules to begin construction.

Response

The commission agrees with the comment. In order for a project to be eligible to begin construction under the proposed rules, the project must not trigger federal NNSR or PSD permitting. The determination of whether a project is major or not (for the purposes of NNSR or PSD applicability) will be made by the time the draft permit is issued. A project that is demonstrated to net out at that stage of the review process would be allowed to begin construction prior to final issuance of the permit. In other words, the determination whether a project is eligible to use the early construction rule is made at the draft permit stage, not application. As the legislature made clear in amending THSC, §382.004, a person cannot begin construction on a project until the executive director has issued a draft permit. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that the proposed rules meet FCAA requirements and federal regulations governing minor NSR permitting programs. TIP and TXOGA commented that the FCAA provides states with substantial discretion in crafting minor NSR preconstruction permitting programs, and that TCEQ maintains one of the most stringent minor NSR programs in the country. TIP and TXOGA stated that EPA has approved other states'

rules allowing for construction prior to permit issuance into those states' implementation plans; and at a much earlier stage in the permitting process than allowed under the proposed Texas rule changes. TIP and TXOGA commented that EPA has even approved rules for other states which allow construction shortly after submission of a permit application, prior to substantive technical review of that application or issuance of a draft permit.

Response

The commission agrees with the comment that the proposed rules satisfy the requirements of the FCAA and applicable federal regulations, and, in combination with other aspects of TCEQ's approved minor source program, provide greater protection than some other States' rules allowing construction prior to permit issuance which EPA has approved as SIP revisions. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA commented that the proposed rules meet FCAA, §110(a)(2)(C), which requires that state SIPs include a program for regulating the construction and modification of stationary sources to ensure that the NAAQS are achieved. The commenters stated that Texas rules require a TCEQ permit engineer to fully review the proposed project for compliance with all rules and regulations, including compliance with the NAAQS, prior to issuing a draft permit, and that applicants are often required to conduct modeling consistent with EPA modeling guidelines in order to make the requisite NAAQS demonstration. In addition, the commenters stated that the applicant cannot operate the changes until a final permit is issued. For these reasons, the commenters stated that allowing "at risk" construction for permit amendment projects at the draft minor NSR permit stage will have no effect on compliance with the NAAQS.

Response

The commission agrees with the comment that the proposed rules satisfy the requirements of FCAA, §110(a)(2)(C), and that the proposed rules will have no adverse effect on compliance with the NAAQS. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that the proposed rules satisfy 40 CFR §51.160(b), which requires that state minor NSR permitting programs ensure that a permitting authority reviewing an application to construct or modify a source must have the means to prevent such construction or modification if it will result in a violation of the applicable control strategy or will interfere with the attainment or maintenance of a NAAQS. The commenters stated that the TCEQ's proposed rule changes have no impact on control strategies or on the attainment or maintenance of a NAAQS. The commenters stated that, unlike some other EPA SIP-approved "at risk" construction programs, the Texas program will only allow at risk construction once a draft permit, including the permit amendment that is the subject of the permit amendment application, is issued. The commenters noted that in order to issue a draft permit, TCEQ must fully evaluate the proposed change for compliance with all rules and regulations, including BACT, health effects, and compliance with the NAAQS. In addition, the commenters noted that the proposed rules will not allow the change to be operated unless and until a final permit is issued.

Response

The commission agrees with the comment that the proposed rules satisfy the requirements of 40 CFR §51.160(b), as the proposed rules in combination with the overall TCEQ permitting process ensure that the permit amendment will not result in a violation of the control strategy or the attainment or maintenance of a NAAQS. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that the proposed rules satisfy 40 CFR §51.161, which requires that state minor NSR permitting programs require the permitting authority to provide opportunity for public comment on information submitted by applicants regarding proposed construction or modification. The commenters noted that TCEQ's proposed rules make no changes to the Texas public notice and comment provisions, which exceed the minimum requirements of 40 CFR §51.161 by requiring applicants to provide two rounds of 30-day public notice and opportunity to comment. The commenters also stated that, prior to issuance of a draft permit, the Texas minor NSR permitting program requires the applicant to make a copy of the permit amendment application publicly available and to publish (and post) notice of the intent to obtain a permit and of the opportunity to provide public comments for 30 days. In addition, the commenters stated that the permit amendment application itself is required to include all information required by 40 CFR §51.161.

Response

The commission agrees with the comment that the proposed rules meet the requirements of 40 CFR §51.161. The proposed revisions do not change TCEQ's SIP-approved rules relating to public notice and comment, which require an opportunity for public comment on information submitted by permit applicants and require that the information be made publicly available. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that the proposed rules satisfy 40 CFR §51.162, which requires identification of the state or local agency with permitting responsibility. TIP and TXOGA stated that TCEQ will remain the issuing authority for the Texas minor NSR program.

Response

The commission agrees with the comment that the proposed rules meet the requirements of 40 CFR §51.162. The proposed revisions do not affect or change TCEQ's status as the approved permitting authority for minor NSR permitting in Texas. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that the proposed rules satisfy 40 CFR §51.163, which requires a SIP to include administrative procedures which will be followed to make determinations required under 40 CFR §51.160(a) regarding air permitting programs. TIP and TXOGA noted that the proposed rules do not change any part of the current minor NSR permitting procedures, except to allow applicants (at their own risk) to choose to begin construction after the draft permit has been issued.

Response

The commission agrees with the comment that the proposed rules meet the requirements of 40 CFR §51.163. The proposed revisions do not affect or change the already-approved adminis-

trative procedures of the Texas minor NSR permitting program. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that 40 CFR §51.164 imposes "good engineering practices" standards on stack heights, and that stack heights will be evaluated as part of the technical evaluation of the amendment application. TIP and TXOGA noted that this technical evaluation includes evaluation of compliance with all rules and regulations, including BACT, health effects, and compliance with the NAAQS, prior to issuance of the draft minor NSR permit.

Response

The commission agrees with the comment. The evaluation of stack height and compliance with 40 CFR §51.164 will be evaluated during the technical review, prior to the issuance of the draft permit. The proposed rules do not affect this process and do not violate or conflict with the requirements of 40 CFR §51.164. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that the proposed rules are not a relaxation of the SIP. The commenters stated that the only effect of the proposed rulemaking will be to allow permit amendment applicants, at their own risk, to begin construction after issuance of a draft minor NSR permit. The commenters noted that, prior to issuing a draft permit, a TCEQ permit reviewer must fully review the proposed project for compliance with all rules and regulations, including compliance with the NAAQS, and that no changes can be operated until a final permit is issued. The commenters also noted that the applicant is required to comply with the terms and conditions of the final issued permit. The commenters stated that the proposed rule changes will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in FCAA, §171), or any other applicable requirement of the FCAA and can be incorporated into the Texas SIP.

Response

The commission agrees with the comment that the proposed rule changes, considered in the context of the TCEQ's existing, SIP-approved program for minor NSR, will not interfere with attainment or reasonable further progress, and are not a relaxation of the SIP. The proposed rules meet applicable requirements of the FCAA and are approvable as a revision to the Texas SIP. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that the proposed rules would not affect the existing contested case hearing process. The commenters noted that the contested case hearing process is not part of the Texas SIP and is not required by the FCAA and implementing federal regulations for minor NSR programs. TIP and TXOGA stated that some commenters may take the position that allowing an applicant to begin construction prior to final issuance of the minor NSR permit amendment will affect the timing and availability of a contested case hearing on the permit amendment; however, TIP and TXOGA stated that the proposed rules will not have such an effect. TIP and TXOGA stated that, because the TCEQ is prohibited by statute from taking into consideration whether the applicant has started construction under the proposed rules, concerns that this proposed rulemaking will interfere with the contested case hearing process are unfounded.

The commenters further stated that, under the proposed rules, a permit amendment application would remain subject to the same permitting and contested case hearing procedures already in effect for other minor NSR permit and permit amendment applications.

Response

The commission agrees with the comment that the proposed rule changes do not affect the existing contested case hearing process. The proposed rules would not affect the public's ability to request a contested case hearing, and the commission is prohibited from considering construction initiated under the proposed rules as a factor when evaluating whether to grant a request for a contested case hearing. No changes to the rules were made in response to these comments.

Comment

TIP and TXOGA stated that the Texas Legislature has previously determined that "at risk" construction prior to a contested case hearing is appropriate. The commenters noted that in 2005, the 79th Texas Legislature created Texas Clean Air Act (TCAA), §382.004 to allow for "at risk" construction after submission of a minor NSR permit application. The commenters stated that the enactment of TCAA, §382.004 is evidence that the Texas Legislature recognized that there are circumstances where an applicant should be allowed to begin construction prior to the completion of the contested case hearing process (itself a creation of the legislature) and issuance of a final permit.

The commenters also stated that Texas Water Code, §26.027(c) and the EPA-approved Texas Pollutant Discharge Elimination System implementing rules found in 30 TAC §217.11(a) provide an exception to the bar against commencing construction of wastewater treatment facilities prior to issuance of the wastewater permit, when the commission specifically approves pre-permit construction. The commenters noted that those wastewater facilities are subject to contested case hearing requests; and therefore, both EPA and TCEQ have authorized Texas applicants to begin construction prior to the issuance of a final permit.

Response

The commission acknowledges the comments. No changes to the rules were made in response to these comments.

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §§116.110, 116.116, 116.118

Statutory Authority

The amendments and new section are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments and new section are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's pur-

pose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.004, concerning Construction While Permit Application Pending, which allows, to the extent permissible under federal law, an applicant for a permit amendment to begin construction at the person's own risk, upon issuance of a draft permit including the amendment; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.0518, concerning Preconstruction Permit, which prescribes the permitting and review procedures for obtaining a permit to construct a new facility or modification of an existing facility that may emit air contaminants; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments and new section are adopted under the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state, including preconstruction permitting program requirements.

The adopted amendments and new section implement THSC, §382.004.

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-1806



SUBCHAPTER G. FLEXIBLE PERMITS

30 TAC §116.710, §116.721

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's

air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.004, concerning Construction While Permit Application Pending, which allows, to the extent permissible under federal law, an applicant for a permit amendment to begin construction at the person's own risk, upon issuance of a draft permit including the amendment; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.0518, concerning Preconstruction Permit, which prescribes the permitting and review procedures for obtaining a permit to construct a new facility or modification of an existing facility that may emit air contaminants; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are adopted under the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state, including preconstruction permitting program requirements.

The adopted amendments implement THSC, §382.004.

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

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER N. FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

30 TAC §336.1310

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §336.1310 *without change* to the proposed text as published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 3022). Therefore, the rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Texas Health and Safety Code (THSC), §401.245, requires the TCEQ by rule to adopt and periodically revise party-state compact waste disposal fees. Section 336.1310 sets the fees for disposal of low-level radioactive waste (LLRW).

In 2017, House Bill (HB) 2662, passed during the 85th Texas Legislature, reduced the disposal surcharge for non-compact generators from 20% to 10% and suspended the 5% state fee for all compact waste until September 1, 2019. During the 86th Texas Legislature (2019), an amendment was made to Senate Bill (SB) 1804 that would retain the reduction of this surcharge and the suspension of the state fee until September 1, 2021. Because SB 1804 was vetoed, the surcharge reverted back to 20% and the 5% state fee was reinstated on September 1, 2019.

The licensee and operator of the Compact Waste Disposal Facility (CWF) in Andrews County, Texas, originally requested a similar reduction to the curie inventory charge (mCi) among other items as part of a rulemaking petition in order to be competitive and to generate sufficient funds so that they do not operate at a financial loss. The rulemaking petition was withdrawn and resubmitted as a request to the executive director to initiate rulemaking for good cause, consistent with the rule requirements in §336.1311.

Therefore, the executive director has taken all of these factors into consideration and determined that the reduction in the mCi is appropriate at this time.

Section Discussion

§336.1310, *Rate Schedule*

The commission adopts amended §336.1310 to reduce the mCi from \$0.40 mCi to \$0.05 mCi. The commission also adopts amended §336.1310 to correct the acronym LLW to LLRW to be consistent with the current definition in §336.2.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule amendment to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to modify the mCi and may offset the increase in the total disposal fee for out-of-compact generators due to the increase of surcharges on this waste that went into effect on September 1, 2019. The reduction of the curie inventory fee in the LLRW disposal rate table of §336.1310 will require the license holder of the CWF to adjust the rate setting for generators as follows. The LLRW fee adjustment will result in a lowering of the maximum rate that the license holder can charge Compact generators of LLRW and a lowering of the minimum rate that the license holder can charge Out-of-Compact generators of LLRW.

Further, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the adopted amendment is not expected to be significant with respect to the economy as a whole or a

sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking does not meet the four applicability requirements because the adopted amendment: (1) does not exceed a standard set by federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the adopted rule; and (4) is not an adoption of a rule solely under the general powers of the commission as the adopted amendment is required by THSC, §401.245. THSC, §401.245, requires the TCEQ by rule to adopt and periodically revise party-state compact waste disposal fees.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The adopted rulemaking amends §336.1310 to adjust one fee charged in the rates. The specific intent of the adopted rulemaking is to modify the mCi to offset the increase in the total disposal fee for out-of-compact generators due to the increase of surcharges on this waste that went into effect on September 1, 2019. The reduction of the mCi fee on LLRW disposal rate schedule solely impacts the license holder of the CWF in rate setting for generators as follows. The LLRW fee adjustment will result in a lowering of the maximum rate that the license holder can charge Compact generators of LLRW and a lowering of the minimum rate that the license holder can charge Out-of-Compact generators of LLRW. The commission's analysis revealed that amending the fee in the rate table section of §336.1310 is consistent with THSC, §401.245, which requires the TCEQ by rule to adopt and periodically revise party-state compact waste disposal fees.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property will occur by amending the maximum disposal rate that a licensee may charge a party state generator for disposal to reduce the mCi, the commission determined that

promulgation and enforcement of this adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there will be no reduction in real property value as a result of the rulemaking. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The comment period closed on Tuesday, June 9, 2020. No comments were received regarding the rulemaking.

Statutory Authority

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The adopted amendment is also authorized by Texas Water Code (TWC), §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state.

The adopted amendment implements THSC, §401.245.

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-1806



CHAPTER 342. REGULATION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS SUBCHAPTER B. REGISTRATION AND FEES 30 TAC §342.26

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §342.26.

The amendment to §342.26 is adopted *without change* to the proposed text as published in the February 28, 2020, issue of

the *Texas Register* (45 TexReg 1314). Therefore, the rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

House Bill 907 (HB 907 or bill), 86th Texas Legislature, 2019, amended Texas Water Code (TWC), Chapter 28A, relating to Aggregate Production Operations (APOs) by requiring the TCEQ to investigate APOs every two years during the first six years in which the APO is registered, and at least once every three years thereafter. The TCEQ may also conduct unannounced periodic inspections at APOs that were issued notices of violations during the preceding three-year period. The bill also requires investigations to be conducted by one or more inspectors trained in the regulatory requirements under the jurisdiction of the TCEQ that are applicable to an active APO.

Additionally, HB 907 increases the maximum annual registration fee for APOs from \$1,000 to \$1,500, as well as, increases the maximum penalty assessed to an unregistered APO from \$10,000 to \$20,000 for each year the APO operates without a registration. HB 907 also increases the maximum total penalty assessed to an APO that is operated three or more years without being registered from \$25,000 to \$40,000.

The adopted rulemaking amends §342.26 by revising the APO annual registration fee in accordance with HB 907.

Section Discussion

§342.26, *Registration Fees*

The commission adopts the amendment to §342.26(b) to replace the monetary amount of "\$1,000" with the phrase, "the amount specified in Texas Water Code, Chapter 28A" in order to implement TWC, §28A.101(b), as amended by HB 907. The commission recommends that a dollar amount not be stated in §342.26(b), but instead, refer to the amount provided in TWC, Chapter 28A. The adopted language will implement the increased maximum annual registration fee and offer flexibility to the commission when determining the tier-based fee structure. Additionally, referencing the governing TWC chapter instead of specifying the monetary amount will provide consistency between Chapter 342 and TWC, Chapter 28A, as well as, maintain compliance with future legislation.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225(a), because it does not meet the definition of a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). The following is a summary of that review.

Texas Government Code, §2001.0225, applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the

economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The legislature enacted HB 907, amending TWC, Chapter 28A, which relates to APOs. As the Bill Analysis from the Environmental Regulation Committee of the Texas House of Representatives makes clear, the 86th Texas Legislature enacted HB 907 with the aim of addressing the continued release of eroded sand and silt into waterways from unauthorized APOs by strengthening enforcement on unregistered APOs. HB 907 seeks to address this issue by amending the TWC to increase fines for active APOs that operate without being registered, as mandated in applicable environmental laws and rules; change how the TCEQ regulates APOs; and increase the registration fee collected from APOs by the TCEQ.

Specifically, HB 907 amends TWC, Chapter 28A, by increasing the maximum penalty assessed to an unregistered APO from \$10,000 to \$20,000 for each year the APO operates without a registration, and increases the maximum total penalty assessed to an APO that is operated three or more years without being registered from \$25,000 to \$40,000. HB 907 also requires that the TCEQ investigate APOs every two years during the first six years in which the APO is registered, at least once every three years thereafter, allows the TCEQ to conduct unannounced periodic inspections at APOs that were issued notices of violations during the preceding three-year period, requires investigations to be conducted by one or more inspectors trained in the regulatory requirements under the jurisdiction of the TCEQ that are applicable to an active APO, and increases the maximum annual registration fee for APOs from \$1,000 to \$1,500. This adopted rulemaking will amend §342.26 to revise the APO annual registration fee in accordance with HB 907.

Therefore, the specific intent of the adopted rulemaking is related to strengthening the enforcement of unauthorized APOs by increasing fees for APOs. The adopted rulemaking amends Chapter 342 to revise the APO annual registration fee in accordance with HB 907. As for the other elements of HB 907, annual regional workplans will be updated to address the bill's increase in investigation frequency of all APOs in the first six years of registration. TCEQ will ensure its APO investigators are trained to be familiar with all regulatory requirements applicable to active APOs under the jurisdiction of the TCEQ, and the TCEQ's Penalty Policy and Penalty Calculation Worksheet will be revised to incorporate the statutorily authorized administrative penalty amounts and changed to the assessed penalty amounts.

Certain aspects of the TCEQ's APO rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor will the adopted rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rulemaking does not fit the Texas Government Code, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking were a "Major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather conforms TCEQ rules to adopted and effective state laws. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being adopted under

the TCEQ's general rulemaking authority. This rulemaking is being adopted under specific state statutes enacted in HB 907. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that analysis.

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 United States Constitution or Texas Constitution, Article I, Section 17 or 19; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that 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% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the adopted rulemaking is to implement the legislative amendments in HB 907 by increasing the APO registration fee, which the legislature deemed an effective avenue to strengthen the regulation of APOs. The adopted rulemaking will substantially advance this stated purpose by adopting rule language that increases the registration fee from \$1,000 to \$1,500.

Promulgation and enforcement of the adopted rule will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Government Code, Chapter 2007 does not apply to this adopted rule because the rule does not impact private real property in a manner that will require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the adopted rulemaking will not apply to or affect any landowner's rights in any private real property because it will not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rule is administrative and will not impose any new regulatory requirements. The primary purpose of the adopted rule is to implement HB 907 by increasing the maximum APO registration fee from \$1,000 to \$1,500. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

The commission invited public comment on the Takings Impact Assessment Determination during the public comment period. The commission received no comments regarding the Takings Impact Assessment Determination.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission invited public comment on this rulemaking. The comment period closed on March 30, 2020. The commission received comments from four individuals.

Response to Comments

Comment

Three of the individuals were not in support of the rulemaking as proposed. One individual commented that the amendment represents the TCEQ not taking responsibility for meaningful legislation, not enforcing current regulations on the APO industry, and not having the resources to regulate the APO industry. One individual commented that a few increased fees for registration and penalties will do nothing to offset the degradation and damage done to the natural resources of the state by APOs, specifically both water quality and quantity, and clean air free of particulate matter. One individual commented that the amendment is meant to fund additional APO registrations and does nothing to enhance TCEQ's ability to regulate the APO industry.

One individual commented generally in support of the adopted amendment stating that the commission is taking a step in the right direction for applying more strict regulation of APOs. However, the individual stated that it is up to the TCEQ and the agency's ability to execute and enforce its regulatory requirements because there is no excuse for Texas not to have appropriate APO regulations.

Response

The commission appreciates the supportive and concerned interest displayed by the public in the state's natural resources and how to protect them. The scope of the rulemaking is limited to implementing the legislation passed by the Texas Legislature during the 86th Legislative Session. The specific intent of the amendment is related to strengthening the enforcement of unauthorized APOs by increasing fees for APOs. The adopted rulemaking amends Chapter 342 to revise the APO annual registration fee in accordance with HB 907. As for the other elements of HB 907, annual regional workplans will be updated to address the bill's increase in investigation frequency of all APOs in the first six years of registration. TCEQ will ensure its APO investigators are trained to be familiar with all regulatory requirements applicable to active APOs under the jurisdiction of the TCEQ, and the TCEQ's Penalty Policy and Penalty Calculation Worksheet will be revised to incorporate the statutorily authorized administrative penalty amounts and changed to the assessed penalty amounts. The adopted rulemaking does not fund APO registrations, the registration fee is paid by APOs to the TCEQ and is used to fund the existing full-time employees appropriated for this program.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state.

The amendment implements House Bill 907, 86th Texas Legislature (2019), TWC, §§5.013, 5.102, 5.103, and 5.120.

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

Filed with the Office of the Secretary of State on July 17, 2020.

TRD-202002940

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: August 6, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 239-1806

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §19.2

The General Land Office (GLO) adopts amendments to Title 31, Part 1, Subchapter A, §19.2, relating to definitions under the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPRA) with changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 855). The rule will be republished. The GLO is filing the adoption of §19.2 with changes because we inadvertently did not file the attached graphic to §19.2(a)(22) with the proposal. The attached coastal map did not change in content, and the heading with the new number reference was the only thing modified to reflect the change.

BACKGROUND AND JUSTIFICATION

Section 19.2

A definition of "secondary containment" has been added to the 19.2 as item 16. This term is used in the rules but has not been defined. The definition provides a scope and clarity for existing requirements. This amendment will also clarify what secondary containment is in the context of proposed changes to Subchapter B changes. The definition is consistent with federal standards and existing business practices. The remaining definitions have been renumbered.

PUBLIC COMMENT

The GLO did not receive any comments on the rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under OSPRA, Texas Natural Resources Code, §40.007(a), which gives the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.117(a)(1)-(a)(4), which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods, and reporting criteria for spill response planning and penalties, hearings, and orders.

Texas Natural Resources Code §§40.109 - 40.117 and 40.251 - 40.258 are affected and implemented by the amendment to the rules.

§19.2. Definitions.

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

(1) Coastal waters--All tidally influenced waters extending from the head of tide in the arms of the Gulf of Mexico seaward to the three marine league limit of Texas' jurisdiction; and non-tidally influenced waters extending from the head of tide in the arms of the Gulf of Mexico inland to the point at which navigation by regulated vessels is naturally or artificially obstructed. The term includes the entirety of the Gulf Intracoastal Waterway (GIWW) within Texas, and the following waters: starting from Echo, Texas, located in Orange County, and proceeding south on the Sabine River to the intersection with the GIWW, thence westerly along the GIWW, including Adams Bayou, to 0.7 miles upstream of IH-10, and Cow Bayou, to IH-10. This includes the Neches River in Orange County to 7.0 miles upstream of IH-10. Then along the GIWW towards Port Arthur, including Taylors Bayou south of Highway 73. From Port Arthur along the GIWW to, and including, East Bay, Trinity Bay, Cedar Bayou to 1.4 miles upstream of IH-10 in Harris/Chambers County, Lynchburg Canal to 29 degrees 41'00"N, 94 degrees 59'00"W, San Jacinto River in Harris County to the Lake Houston Dam, and the Houston Ship Channel to the turning basin. Tidal tributaries of the Houston Ship Channel include: Buffalo Bayou to .25 miles upstream of Shepherd Drive, Brays Bayou to the Broadway Street Bridge, Sims Bayou to Highway 225, Vince Bayou to North Ritchie Street, Hunting Bayou to I-10, Greens Bayou to I-10, Boggy Bayou to Highway 225, Tucker Bayou to Old Battleground Road, Carpenter's Bayou to Sheldon Road, and Goose Creek to Highway 146. Proceed south and include Barbours Cut, Bayport Channel, Clear Lake to .063 miles upstream of FM 528 in Galveston/Harris County, Dickinson Bay, Dickinson Bayou 2.5 miles downstream of FM 517 in Galveston County, Moses Lake, Dollar Bay, Texas City Channel (including turning basin), Swan Lake, Jones Bay, and continuing at the junction of West Bay and the GIWW in Galveston County. Continue westerly along the GIWW to the Port of Freeport, including Greens Lake, Chocolate Bay, Chocolate Bayou to 2.6 miles downstream of SH 35, the Old Brazos River and the New Brazos River up to the Missouri-Pacific Railroad bridge in Brazoria County, and the Dow Barge Canal. Then southerly along the GIWW through and including Jones Lake and Creek, the San Bernard River to 2.0 miles upstream of SH 35, Cowtrap Lake, Matagorda Bay, the Colorado River to 1.3 miles downstream of the Missouri-Pacific Railroad in Matagorda County, to the Port of Bay City, Culver Cut (West Branch Colorado River to 28 degrees 42'N and the entire middle branch), Crab Lake, Oyster Lake, Tres Palacios Bay, Turtle Bay, Caranchua Bay, Keller Bay, Cox Bay, Lavaca Bay, Lavaca River to 5.3 miles downstream of U.S. 59 in Jackson County, Chocolate Bay/Bayou, Powderhorn Lake, Robinsons

Lake, Blind Bayou, La Salle Bayou, Broad Bayou, and Boggy Bayou. Continuing southerly on GIWW from Port O'Connor through San Antonio Bay including: Guadalupe Bay, Mission Lake, Green Lake, Victoria Barge Canal, Guadalupe River to the Guadalupe-Blanco River Authority Salt Water Barrier 0.4 miles downstream of the confluence of the San Antonio River, Goff Bayou, Hog Bayou, Corey Bay, Buffalo Lake, Alligator Slide Lake, Twin Lake, Mustang Lake, and Jones Lake. Then continuing through Mesquite Bay including: Dunham Bay, Long Lake, Sundown Bay, and the Aransas Wildlife Refuge. Continuing southerly through St. Charles Bay including: Burgentine Bay/Burgentine Creek to 28 degrees 17'N, Salt Creek to 28 degrees 16'N, and Cavaso Creek to 97 degrees 01'W. Then through Copano Bay, including Copano Creek, Mission Bay, Mission River to 4.6 miles downstream of U.S. 77, Chiltipin Creek, Aransas River to 3.3 miles upstream of Chiltipin Creek in Refugio/San Patricio County, Swan Lake, Port Bay, and Salt Lake. Then southerly including: Little Bay, Aransas Bay, Conn Brown Harbor, Redfish Cove, Redfish Bay, La Quinta Channel, Nueces River to Calallen Dam 1.1 miles upstream of U.S. 77/IH 37 in Nueces/San Patricio County, Rincon Industrial Channel, Rincon Bayou, Nueces Bay, Tule Lake, Corpus Christi Inner Harbor, Oso Creek, Oso Bay, Cayo Del Oso, and Corpus Christi Bay. Continuing south, through and including Packery Channel, Laguna Madre, Baffin Bay, Alazan Bay, Cayo del Hinoso, Petrolino Creek from the confluence of Chiltipin Creek in Kleberg County to 0.6 miles upstream of private road crossing near Laurless Ranch, Cayo Del Infiernillo, Cayo del Grullo, Laguna Salada, Laguna de los Olmos, and Comitas Lake. Continuing through the Laguna Madre to Redfish Bay, Port Mansfield Harbor, Four Mile Slough, Cayo Atascosa, Laguna Atascosa, Arroyo Colorado Cutoff, El Realito Bay, Laguna Vista Cove, Port Isabel Harbor, Brownsville Ship Channel, Bahia Grande, Vadia Ancha, San Martin Lake, South Bay, and the Arroyo Colorado River to .063 miles downstream of Cemetery Road south of Port Harlingen in Cameron County. Then southerly to the Rio Grande River to 6.7 miles downstream of the International Bridge in Cameron County. Where the coastal area is defined by a body of water such as a bay or lake, it includes any small bays or lakes encompassed therein.

(2) Commissioner--The commissioner of the General Land Office.

(3) Discharge cleanup organization--A corporation, partnership, proprietorship, organization, or association that intends to make itself available to engage in response actions to abate, contain, or remove an unauthorized discharge or pollution or damage from an unauthorized discharge.

(4) Environmentally sensitive areas--Streams and water bodies, aquifer recharge zones, springs, wetlands, bird rookeries, endangered and threatened species (flora and fauna) habitat, wildlife preserves or conservation areas, parks, beaches, dunes, or any other area protected or managed for its natural resource value.

(5) Facility--Any waterfront or offshore pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge of oil from the facility could threaten coastal waters, including but not limited to any such facility owned or operated by a public utility or a governmental or quasi-governmental body, but does not include any temporary storage facilities used only in connection with the containment and cleanup of unauthorized discharges of oil.

(6) Fund--The coastal protection fund established under OSPRA.

(7) Federal fund--The oil spill liability trust fund established under OPA.

(8) Handle--To transfer, transport, pump, treat, process, store, dispose of, drill for, or produce.

(9) Harmful quantity of oil--The presence of oil from an unauthorized discharge in a quantity sufficient either to create a visible film or sheen upon or discoloration of the surface of the water or a shoreline, tidal flat, beach, or marsh, or to cause a sludge or emulsion to be deposited beneath the surface of the water or on a shoreline, tidal flat, beach, or marsh.

(10) National contingency plan--The plan prepared under the Federal Water Pollution Control Act (33 United States Code §1321 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 United States Code §9601 et seq.), as revised from time to time.

(11) Oil--Means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), §101(14), Subparagraphs (A)-(F) (42 United States Code §9601 et seq.), and which is subject to the provisions of that Act, and which is so designated by the Texas Commission on Environmental Quality.

(12) OPA--The Oil Pollution Act of 1990, Public Law 101-380.

(13) OSPRA--The Oil Spill Prevention and Response Act of 1991, Natural Resources Code, Chapter 40.

(14) Owner or operator--Any person, individual, partnership, corporation, association, governmental unit, or public or private organization of any character:

(A) owning, operating or responsible for operating, or chartering by demise a vessel;

(B) owning, operating, or responsible for operating a facility; or

(C) operating a facility by lease, contract, or other form of agreement. The term does not include a person who owns only the land underlying a facility or a person who owns only a security interest in a vessel or facility if the person does not participate in the operation of the vessel or facility, does not own a controlling interest in the owner or operator of the vessel or facility, and is not controlled by or under common ownership with the owner or operator of the vessel or facility.

(15) Regulated vessel--A vessel with a capacity to carry 10,000 U.S. gallons or more of oil as fuel or cargo.

(16) Secondary Containment--appropriate and functioning impervious containment or diversionary structures or equipment, including walls and floors, that must capture and contain oil and are constructed to hold the full capacity of any discharge from the associated structure, or hold the full capacity of the largest primary containment structure in a system, so that the discharge will not escape the containment system before cleanup is complete. Secondary containment may include:

(A) For onshore facilities:

(i) Dikes, berms, retaining walls, and weirs;

(ii) Culverts, gutters, and other draining systems;

(iii) Curbing and drip pans;

(iv) Sumps, retention ponds, and other collection systems; and

(v) Double-walled tanks.

(B) For offshore facilities:

(i) Curbing and drip pans;

(ii) Sumps, retention ponds, and collection systems; and

(iii) Double-walled tanks.

(17) Unauthorized discharge--Discharges; excluding those authorized by and in compliance with a government permit, seepage from the earth solely from natural causes, and unavoidable, minute discharges of oil from a properly functioning engine, of a harmful quantity of oil:

(A) into coastal waters; or

(B) on any waters or land adjacent to coastal waters where harmful quantities of oil may enter coastal waters or threaten to enter coastal waters if the discharge is not abated nor contained and the oil is not removed.

(18) Underground storage tank--Any tank or container used for storing oil which is located completely under the surface of the earth. Tanks which are partially buried, or which are contained in aboveground vaults or other aboveground containment structures are not considered underground tanks for the purpose of certification requirements under these sections.

(19) Underwriter--An insurer, a surety company, a guarantor, or any other person, other than an owner or operator of a vessel or facility, that undertakes to pay all or part of the liability of an owner or operator.

(20) Waste--Oil or contaminated soil, debris, and other substances removed from coastal waters and adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes in response to an unauthorized discharge. Waste means any solid, liquid, or other material intended to be disposed of or discarded and generated as a result of an unauthorized discharge of oil. Waste does not include substances intended to be recycled if they are in fact recycled within 90 days of their generation or if they are brought to a recycling facility within that time.

(21) Worst case unauthorized discharge--The largest foreseeable unauthorized discharge under adverse weather conditions. For facilities located above the high water line of coastal waters, a worst case discharge includes those occurring in weather conditions most likely to cause oil discharged from the facility to enter coastal waters.

(22) Coastal Facility Designation Line--The Coastal Facility Designation Line delineates the area within which a facility may be subject to the certification requirements of §19.12 of this title (relating to Facility Certification). The line does not delineate OSPRA's response or notification requirements; rather, it gives notice to facilities located coastward of the line that they may be subject to facility certification requirements. A description of the coastal facility designation line and a map can be found in Appendix 1.

Figure: 31 TAC §19.2(a)(22)

(23) Offshore--Located on submerged lands below mean high tide in coastal waters.

(24) Waterfront--Located within 100 yards of coastal waters.

(b) All other terms used in this chapter and defined in OSPRA have the meaning assigned to them by OSPRA.

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

Filed with the Office of the Secretary of State on July 20, 2020.

TRD-202002963

Mark Havens

Deputy Commission, Chief Clerk

General Land Office

Effective date: August 9, 2020

Proposal publication date: February 7, 2020

For further information, please call: (512) 475-1859



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE

SUBCHAPTER B. SPILL PREVENTION AND PREPAREDNESS

31 TAC §§19.12 - 19.14, 19.16, 19.18

The General Land Office (GLO) adopts amendments to Title 31, Part 1, Subchapter B, §§19.12 - 19.14, 19.16 and 19.18, relating to authority of the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPRA) to conform with statutory revisions, clarify secondary containment requirements and certification requirements, and to make non-substantive edits. The amendment was published in the February 7, 2020 issue of the *Texas Register* (45 TexReg 857) and is being adopted without changes and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

These amendments are adopted to conform with statutory revision in House Bill 1481 Acts 2017, 85th Legislature, Chapter

1014, effective September 1, 2017 and to make changes to the use of the term "material safety data sheet." Adopted amendments include references to and planning requirements for secondary containment, enhancement to application requirements including the requirement to have a 24-hour emergency contact number, and the obligation to have legible spill response contact signage at a facility. Other changes have been made conform the rules to existing practices, adapt the rules to changes within the agency, clarify terminology, and to modify requirements in the rules as necessary to ensure clarity and enforceability.

PUBLIC COMMENT

The GLO did not receive any comments on the rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under OSPRA, Texas Natural Resources Code, §40.007(a), which gives the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.117(a)(1)-(a)(4), which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods, and reporting, criteria for spill response planning and penalties, hearings, and orders.

Texas Natural Resources Code §§40.109 - 40.117 and 40.251 - 40.258 are affected and implemented by the adopted amendment to the rules.

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 July 20, 2020.

TRD-202002965

Mark Havens

Deputy Commissioner, Chief Clerk

General Land Office

Earliest possible date of adoption: August 9, 2020

For further information, please call: (512) 475-1859



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Finance Commission of Texas

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 84, concerning Motor Vehicle Installment Sales.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202002979

Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: July 21, 2020



Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 97, Planning and Accountability, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 97 are organized under the following subchapters: Subchapter AA, Accountability and Performance Monitoring; Subchapter BB, Memoranda of Understanding; Subchapter EE, Accreditation Status, Standards, and Sanctions; and Subchapter FF, Commissioner's Rules Concerning the Job Corps Diploma Program.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 97, Subchapters AA, BB, EE, and FF, continue to exist.

The public comment period on the review of 19 TAC Chapter 97, Subchapters AA, BB, EE, and FF, begins July 31, 2020, and ends August 31, 2020. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review>.

TRD-202002999

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: July 22, 2020



Texas Department of Transportation

Title 43, Part 1

Notice of Intention to Review

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 2, Environmental Review of Transportation Projects; Chapter 7, Rail Facilities; Chapter 26, Regional Mobility Authorities; Chapter 28, Oversize and Overweight Vehicles and Loads; Chapter 30, Aviation; and Chapter 31, Public Transportation.

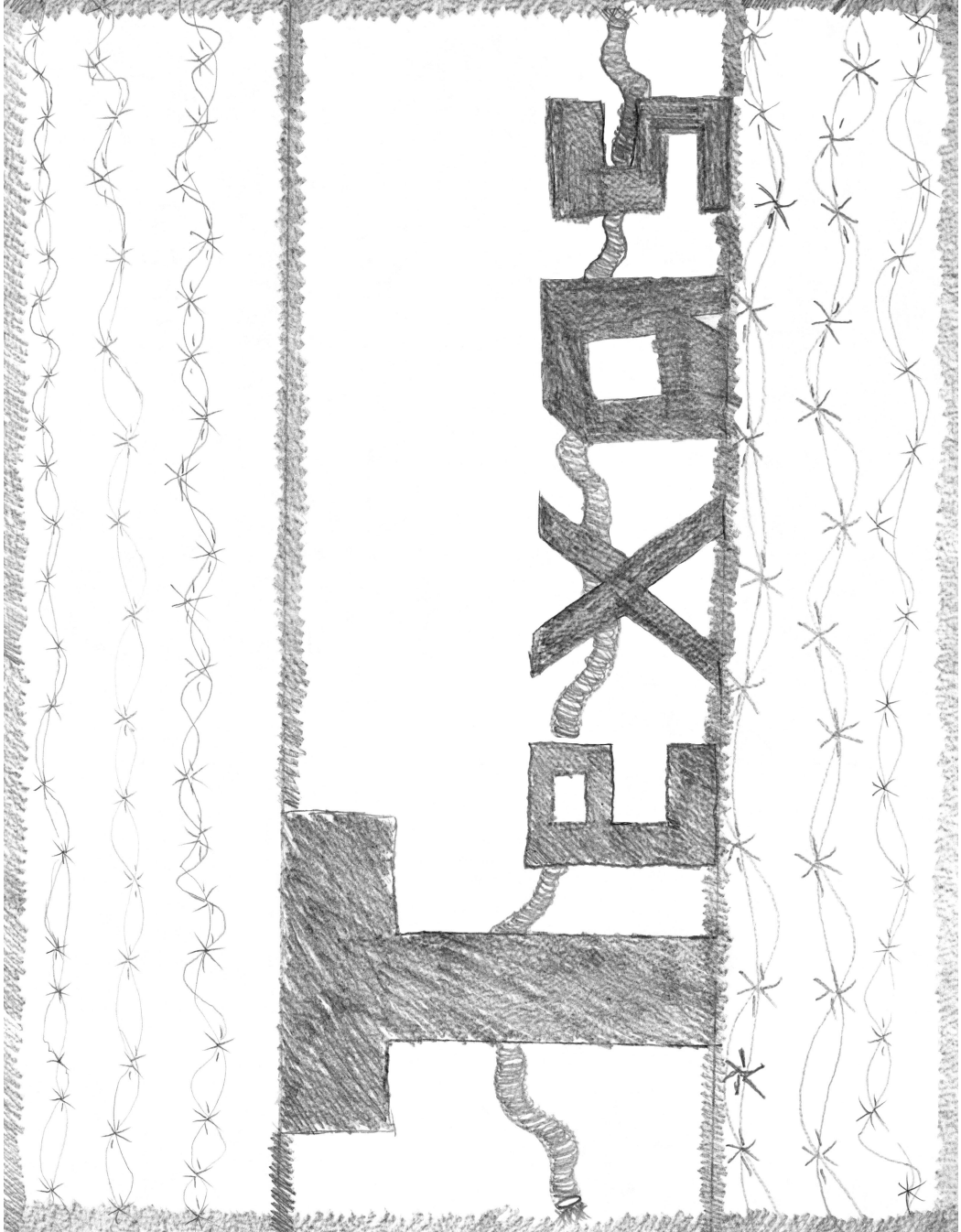
The department will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Rule Review." The deadline for receipt of comments is 5:00 p.m. on August 31, 2020.

In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-202002923

Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: July 15, 2020





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 1 TAC §18.31(a)

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
253.031(b)	The amount of political contributions or political expenditures permitted by a political committee before a campaign treasurer appointment is required	\$500	<u>\$910</u> [\$870]
253.031(d)(2)	The amount of political contributions or political expenditures permitted by a county executive party of a political party before a campaign treasurer appointment is required	\$25,000	<u>\$33,750</u> [\$32,320]
253.032(a)	Threshold of contributions accepted from an out-of-state political committee above which a certain written statement or a statement of organization is required	\$500	<u>\$930</u> [\$900]
253.032(a)(1)	Threshold of contributions to an out-of-state political committee above which certain information regarding contributions must be included in the written statement required under section 253.032(a), Election Code	\$100	<u>\$190</u> [\$180]
253.032(e)	Threshold of contributions accepted from an out-of-state political committee at or below which certain information or a statement of organization must be included in a report	\$500	<u>\$930</u> [\$900]
254.031(a)(1)	Threshold at which contributor information is required to be reported	\$50	\$90

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.031(a)(2)	Threshold at which lender information is required to be reported	\$50	\$90
254.031(a)(3)	Threshold at which information on the payee of a political expenditure is required to be reported	\$100	<u>\$190</u> [\$180]
254.031(a)(5)	Threshold below which contributor information is not required to be reported	\$50	\$90
254.031(a)(5)	Threshold below which payee information is not required to be reported	\$100	<u>\$190</u> [\$180]
254.031(a)(9)	Threshold at which the source of any credit, interest, return of deposit fee from political contributions or asset is required to be reported	\$100	<u>\$120</u> [\$130]
254.031(a)(10)	Threshold at which the proceeds from sale of a political asset is required to be reported	\$50	<u>\$120</u> [\$130]
254.031(a)(11)	Threshold at which any gain from an investment purchased with political contributions is required to be reported	\$50	<u>\$120</u> [\$130]
254.031(a)(12)	Threshold at which any other gain from political contribution is required to be reported	\$50	<u>\$120</u> [\$130]
254.0311(b)(1)	Threshold at which contributor information for contributions from non-caucus members is required to be reported by a caucus	\$50	\$90
254.0311(b)(2)	Threshold at which lender information is required to be reported by a caucus	\$50	\$90
254.0311(b)(3)	Threshold at which payee information for expenditures is required to be reported by a caucus	\$50	\$90

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.0311(b)(3)	Threshold below which payee information for expenditures is not required to be reported by a caucus	\$50	\$90
254.0311(b)(4)	Threshold below which contributor and payee information is not required to be reported by a caucus	\$50	\$90
254.0312	Threshold at which the best efforts rule requires one to make a written or oral request for contributor information in order to be considered in compliance when contributor information is missing	\$500	<u>\$710</u> [\$680]
254.036	Threshold of political contributions and political expenditures below which a filer qualifies for the electronic filing exemption, if certain conditions are met	\$20,000	<u>\$28,420</u> [\$27,140]
254.038(a)	Contribution threshold triggering a Special Report Near Election by Certain Candidates and Political Committees during the 9 days before election	\$1,000	<u>\$1,860</u> [\$1,790]
254.039	Contribution threshold triggering Special Report Near Election by GPACs during the 9 days before election	\$5,000	<u>\$6,370</u> [\$6,090]
254.039	Direct Campaign expenditure thresholds triggering Special Report Near Election by GPACs (\$1,000 for single candidate or \$15,000 for group of candidates) during the 9 days before election	\$1,000/\$15,000	<u>\$1,860/\$27,950</u> [\$1,790/\$26,780]

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.0611(a)(2)	Threshold at which principal occupation/employer information for contributors to judicial filers is required to be reported	\$50	\$90
254.0611(a)(3)	Threshold at which the disclosure of an asset purchased with political contributions is required to be reported by judicial filers	\$500	<u>\$930</u> [\$900]
254.0612	Threshold at which principal occupation/employer information for contributors to statewide executive and legislative candidates is required to be reported	\$500	<u>\$930</u> [\$900]
254.095	Threshold of political contributions or political contributions below which a report is not required for officeholders who do not file with the Commission, unless also a candidate	\$500	<u>\$930</u> [\$900]
254.151(6)	Threshold at which the principal occupation for GPAC contributors is required to be reported	\$50	\$90
254.1541(a)	Threshold of political contributions and political expenditures below which a GPAC has a \$100 contribution itemization threshold, rather than \$50	\$20,000	<u>\$27,000</u> [\$25,860]
254.1541(b)	Contribution reporting threshold for GPACs qualifying under section 254.1541 set to \$100	\$100	<u>\$190</u> [\$180]

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.156(1)	Threshold at which contributor, lender, and payee information is required for a political contribution, loan, or expenditure, respectively, to an MPAC	\$10	\$20
254.156(2)	Threshold at which contribution information for MPACs qualifying under section 254.1541 is set to \$20	\$20	\$40
254.181, 254.182, 254.183	Threshold of political contributions and political expenditures below which a candidate or SPAC may elect to avoid certain pre-election filing requirements (modified reporting)	\$500	<u>\$930</u> [\$900]
254.261	Threshold at which a person making direct campaign expenditures in an election must disclose the expenditures, including payee information	\$100	<u>\$140</u> [\$130]

Figure 2: 1 TAC §18.31(a)

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.003(1)	Threshold of expenditures over which a person must register as a lobbyist	\$500, by 1 Tex. Admin. Code §34.41	<u>\$810</u> [\$780]
305.003(2)	Threshold of compensation or reimbursement over which a person must register as a lobbyist	\$1,000, by 1 Tex. Admin. Code §34.43	<u>\$1,620</u> [\$1,560]
305.004(7)	Threshold of expenditures and compensation below which a person lobbying on behalf of political party is excepted from the requirement to register as a lobbyist	\$5,000	<u>\$9,320</u> [\$8,920]
305.005(g)(2)	Threshold of category to report compensation less than \$10,000	\$10,000	<u>\$18,630</u> [\$17,860]
305.005(g)(3)	Upper threshold of category to report compensation of at least \$10,000 but less than \$25,000	\$25,000	<u>\$46,580</u> [\$44,630]
305.005(g)(4)	Upper threshold of category to report compensation of at least \$25,000 but less than \$50,000	\$50,000	<u>\$93,150</u> [\$89,260]
305.005(g)(5)	Upper threshold of category to report compensation of at least \$50,000 but less than \$100,000	\$100,000	<u>\$186,300</u> [\$178,520]
305.005(g)(6)	Upper threshold of category to report compensation of at least \$100,000 but less than \$150,000	\$150,000	<u>\$279,450</u> [\$267,770]
305.005(g)(7)	Upper threshold of category to report compensation of at least \$150,000 but less than \$200,000	\$200,000	<u>\$372,600</u> [\$357,030]
305.005(g)(8)	Upper threshold of category to report compensation of at least \$200,000 but less than \$250,000	\$250,000	<u>\$465,750</u> [\$446,280]
305.005(g)(9)	Upper threshold of category to report compensation of at least \$250,000 but less than \$300,000	\$300,000	<u>\$558,900</u> [\$535,540]
305.005(g)(10)	Upper threshold of category to report compensation of at	\$350,000	<u>\$652,050</u> [\$624,790]

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
	least \$300,000 but less than \$350,000		
305.005(g)(11)	Upper threshold of category to report compensation of at least \$350,000 but less than \$400,000	\$400,000	<u>\$745,200</u> [\$714,050]
305.005(g)(12)	Upper threshold of category to report compensation of at least \$400,000 but less than \$450,000	\$450,000	<u>\$838,350</u> [\$802,310]
305.005(g)(13)	Upper threshold of category to report compensation of at least \$450,000 but less than \$500,000	\$500,000	<u>\$931,500</u> [\$892,560]
305.005(g-1)	Threshold of compensation or reimbursement at which a registrant must report the exact amount	\$500,000	<u>\$931,500</u> [\$892,560]
305.0061(c)(3)	Threshold over which the name of a legislator who is the recipient of a gift, a description of the gift, and amount of the gift is required to be disclosed	\$50	\$90
305.0061(e-1)	Threshold below which an expenditure for food or beverages is considered a gift and reported as such	\$50	\$90
305.0063	Threshold of expenditures below which a registrant may file lobby activities reports annually instead of monthly	\$1,000	<u>\$1,860</u> [\$1,790]

Figure 3: 1 TAC §18.31(a)

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.022(a){1}	Threshold of category to report an amount less than \$5,000	less than \$5,000	less than <u>\$9,320</u> [\$8,930]
572.022(a){2}	Threshold of category to report an amount of at least \$5,000 but less than \$10,000	\$5,000 to less than \$10,000	<u>\$9,320</u> [\$8,930] to less than <u>\$18,630</u> [\$17,860]
572.022(a){3}	Threshold of category to report an amount of at least \$10,000 but less than \$25,000	\$10,000 to less than \$25,000	<u>\$18,630</u> [\$17,860] to less than <u>\$46,580</u> [\$44,630]
572.022(a){4}	Threshold of category to report an amount of at least \$25,000 or more	\$25,000 or more	<u>\$46,580</u> [\$44,630] or more
572.005, 572.023(b){1}	Threshold to disclose the source and category of amount of retainer received by a business entity in which the filer has a substantial interest; section 572.005 defines substantial interest, in part, as owning over \$25,000 of the fair market value of the business entity	\$25,000	<u>\$46,580</u> [\$44,630]
572.023(b){4}	Threshold over which income from interest, dividends, royalties, and rents is required to be reported	\$500	<u>\$930</u> [\$900]
572.023(b){5}	Threshold over which the identity of each loan guarantor and person to whom filer owes liability on a personal note or lease agreement is required to be reported	\$1,000	<u>\$1,860</u> [\$1,790]
572.023(b){7}	Threshold of value over which the identity of the source of a gift and a gift description is required to be reported	\$250	<u>\$470</u> [\$450]
572.023(b){8}	Threshold over which the source and amount of income received as beneficiary of a trust asset is required to be reported	\$500	<u>\$930</u> [\$900]
572.023(b){15}	<u>if aggregate cost of goods or services sold under contracts exceeds \$10,000, PFS must identify each contract, and name of each party, with a</u>	<u>Exceeds \$10,000</u>	<u>\$10,220</u>

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
	<u>governmental entity for sale of goods or services in amount of \$2,500 or more</u>		
<u>572.023(b)(15)(A)</u>	<u>itemization under (15) of contracts for sale of goods or services in the amount of \$2,500 or more to governmental entities</u>	<u>\$2,500 or more</u>	<u>\$2,560 or more</u>
<u>572.023(b)(16)(D)(i)</u>	<u>category of amount of bound counsel fees paid to legislator</u>	<u>less than \$5,000</u>	<u>less than \$5,110</u>
<u>572.023(b)(16)(D)(ii)</u>	<u>category of amount of bound counsel fees paid to legislator</u>	<u>at least \$5,000 but less than \$10,000</u>	<u>at least \$5,110 but less than \$10,220</u>
<u>572.023(b)(16)(D)(iii)</u>	<u>category of amount of bound counsel fees paid to legislator</u>	<u>at least \$10,000 but less than \$25,000</u>	<u>at least \$10,220 but less than \$25,550</u>
<u>572.023(b)(16)(D)(iv)</u>	<u>category of amount of bound counsel fees paid to legislator</u>	<u>\$25,000 or more</u>	<u>\$25,550 or more</u>
<u>572.023(b)(16)(E)(i)</u>	<u>category of amount of bound counsel fees paid to individual's firm</u>	<u>less than \$5,000</u>	<u>less than \$5,110</u>
<u>572.023(b)(16)(E)(ii)</u>	<u>category of amount of bound counsel fees paid to individual's firm</u>	<u>at least \$5,000 but less than \$10,000</u>	<u>at least \$5,110 but less than \$10,220</u>
<u>572.023(b)(16)(E)(iii)</u>	<u>category of amount of bound counsel fees paid to individual's firm</u>	<u>at least \$10,000 but less than \$25,000</u>	<u>at least \$10,220 but less than \$25,550</u>
<u>572.023(b)(16)(E)(iv)</u>	<u>category of amount of bound counsel fees paid to individual's firm</u>	<u>\$25,000 or more</u>	<u>\$25,550 or more</u>

Figure 4: 1 TAC §18.31(a)

Speaker Election and Certain Ceremonial Reports: Section of Government Code	Threshold Type	Current Threshold Amount	Adjusted Amount
302.014(4)	Expenditure of campaign funds over \$10 must be disclosed, including payee's name and address and the purpose	\$10	\$20
303.005(a)(1) – (10)	Thresholds applicable to contribution and expenditure disclosure requirements for a governor for a day or speaker's reunion day ceremony report	\$50	\$90

Figure: 30 TAC §17.14(a)

[Figure: 30 TAC §17.14(a)]

Tier I Table The property listed in this table is property that the executive director has determined is used wholly or partly for pollution control purposes when used as shown in the Description section of the table and when no marketable product arises from using the property, except heat recovery steam generators listed as a partial use percentage. The items listed are described in generic terms without the use of brand names or trademarks. The use percentages on all property on the table are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner (e.g., use in production or recovery of a marketable product), the executive director may require that a Tier III application, using the Cost Analysis Procedure, be filed by the applicant to calculate the appropriate use determination percentage. For items where the description limits the use determination to the incremental cost difference, the cost of the property or device with the pollution control feature is compared to a similar device or property without the pollution control feature. The table is a list adopted under Texas Tax Code, §11.31(g).

Air Pollution Control Equipment

Particulate control Devices

No.	Media	Property	Description	%
A-1	Air	Dust Collection Systems	Structures containing filters, blowers, ductwork - used to remove particulate matter from exhaust gas streams in order to prevent release of particulate matter to ambient air.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges - used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection created by an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators with blowers and ductwork used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high- pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, and blowers needed for the equipment to function.	100

No.	Media	Property	Description	%
A-6	Air	Water/ Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, and pumps used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units to control particulate emissions and opacity on start-up.	100

Combustion Based Control Devices

No.	Media	Property	Description	%
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, and blowers used to destroy air contaminants in a vent gas stream.	100

Non-Volatile Organic Compounds Gaseous Control Devices

No.	Media	Property	Description	%
A-40	Air	Molecular Sieve	Microporous filter used to remove hydrogen sulfide (H ₂ S) or nitrogen oxides (NO _x) [(NO _x)] from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
A-43	Air	Halon Replacement Projects	All necessary equipment needed to replace the Halon in a fire suppression system with an environmentally cleaner substance.	100

Monitoring and Sampling Equipment

No.	Media	Property	Description	%
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100

No.	Media	Property	Description	%
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations of regulated air contaminants, (including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, and other meters for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, and power supplies used to monitor for levels of contaminants in ambient air.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used solely to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67	Air	Automotive Dynamometers	Automotive dynamometers used for emissions testing of fleet vehicles.	100

Nitrogen Oxides Controls

No.	Media	Property	Description	%
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce nitrogen oxides (NO_x) [NO_x] emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x [NO_x] emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x [NO_x] formation for fuel injected, naturally aspirated, or turbocharged engines.	100

No.	Media	Property	Description	%
A-83	Air	Flue Gas Recirculation	Ductwork and blowers used to redirect part of the flue gas back to the combustion chamber for reduction of <u>NO_x</u> [NO _x] formation. May include fly ash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, and pumps to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce <u>NO_x</u> [NO _x] formation.	100
A-85	Air	Over-fire Air & Combination of asymmetric over-fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over- fire air layout injects preheated air and anhydrous ammonia or other pollutant-reducing agent through nozzles through a series of ducts, dampers, expansion joints, and valves.	100
A-86	Air	<u>Low-NO_x</u> [Low-NO _x] Burners	Installation of <u>low-NO_x</u> [low-NO _x] burners. The eligible portion is the incremental cost difference. For a replacement burner, the incremental cost difference is calculated by comparing the cost of the new burner with the cost of the existing burner. For new installations, the incremental cost difference is calculated by comparing the cost of the new burner to the cost of a similarly sized burner without <u>NO_x</u> [NO _x] controls from the most recent generation of burners.	100
A-87	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots, thereby reducing <u>NO_x</u> [NO _x] formation.	100
A-88	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing <u>NO_x</u> [NO _x] including directly related equipment.	100
A-89	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or <u>NO_x</u> [NO _x] control.	100
<u>A-90</u>	<u>Air</u>	<u>Dry Low-NO_x Emission Systems</u>	<u>Equipment installed on natural gas-fired compression turbines to reduce NO_x emissions including combustor liners, injectors, fuel conditioning system, fuel ring, fuel control valve, pilot valve, sensors, controls, fuel gas treater, fuel nozzle assemblies, transition piece assemblies, cap assemblies, inner crossfire tubes and outer crossfire tubes.</u>	<u>100</u>
<u>A-91</u>	<u>Air</u>	<u>Lean-Burn Portions of Reciprocating Engines</u>	<u>Turbocharger, fuel injection system consisting of fuel nozzles positioned within a pre-combustion chamber, and pre-combustion chamber for engines.</u>	<u>100</u>

No.	Media	Property	Description	%
<u>A-92</u>	<u>Air</u>	<u>Heat Recovery Steam Generators</u>	<u>A boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions.</u>	<u>65</u>

Volatile Organic [organic] Compounds Control

No.	Media	Property	Description	%
A-110	Air	Carbon Adsorption Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove volatile organic compounds (VOC) emissions and odors from exhaust gas streams.	100
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks.	100
A-112	Air	Replacement of Existing Pumps, Valves, or Seals in Piping Service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive VOC emissions. New systems do not qualify for this item.	100
A-113	Air	Welding of Pipe Joints in VOC Service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints to eliminate fugitive emission leaks.	100
A-114	Air	Welding of Pipe Joints in VOC Service (New Construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	External Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks. Must be installed to meet or exceed §115.112 of this title (relating to Control Requirements).	100
<u>A-116</u>	<u>Air</u>	<u>Fixed Storage Tank Roofs</u>	<u>Fixed roofs installed on external floating roof tanks used to store any product containing VOC as an additional VOC control measure.</u>	<u>100</u>
<u>A-117</u>	<u>Air</u>	<u>Geodesic Domes</u>	<u>Geodesic domes installed on external floating roof storage tanks as a means of controlling VOC emissions.</u>	<u>100</u>
<u>A-118</u>	<u>Air</u>	<u>Submerged Fill Pipes</u>	<u>Submerged fill pipes installed in storage tanks used to store any product containing VOC.</u>	<u>100</u>
<u>A-119</u>	<u>Air</u>	<u>Dual Mechanical Pump Seals</u>	<u>The incremental cost difference between the cost of dual mechanical seal pumps and comparable single sealed pumps.</u>	<u>100</u>

No.	Media	Property	Description	%
A-120	Air	Seal-Less Pumps	<u>The incremental cost difference between the cost of seal-less pumps and the cost of similarly sized pumps with seals.</u>	100

Mercury Control

No.	Media	Property	Description	%
A-130	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically react to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles, ductwork, hoppers, and particulate collection devices needed for the equipment to function.	100
A-131	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-132	Air	Mercury Absorbing Filters	Filters that absorb mercury such as those using the affinity between mercury and metallic selenium.	100
A-133	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives that can be added to the flue gas or directly to the fuel.	100
A-134	Air	Photochemical Oxidation	Use of an ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury. These units are only eligible if mercury is removed from flue gas.	100
A-135	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive, which is then removed in a particulate removal device.	100

Sulfur Oxides Controls

No.	Media	Property	Description	%
A-160	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100

No.	Media	Property	Description	%
A-161	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce sulfur oxide emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100

Miscellaneous Control Equipment

No.	Media	Property	Description	%
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, blowers, hoods, and ducts used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stack extensions to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, and compressors used to capture a waste gas or liquid stream and vent to a control device, including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100
A-185	Air	Paint Booth Control Devices	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
A-186	Air	Blast Cleaning System - Connected to a Control Device	Particulate control device and blast material recycling system.	100
A-187	Air	Amine or Chilled Ammonia Scrubber	Installed to provide post combustion capture of pollutants (including carbon dioxide (<u>CO₂</u>)) upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating [carbon dioxide] <u>CO₂</u> as a pollutant).	100
A-188	Air	Catalyst-based Systems	Installed to allow the use of catalysts to reduce pollutants in emission streams.	100
A-189	Air	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.	100

No.	Media	Property	Description	%
A-190	Air	Airless Paint Spray Gun	The incremental cost difference between an airless paint spray gun and a comparable standard air powered paint spray gun.	100

Water and Wastewater Pollution Control Equipment

Solid Separation and De-watering

No.	Media	Property	Description	%
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Wastewater [Waste water]	CPI Separator	Mechanical oil, water, and solids separator.	100
W-3	Wastewater [Waste water]	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Wastewater [Waste water]	Skimmer	Used to remove hydrocarbon from process wastewater.	100
W-5	Wastewater [Waste water]	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Wastewater [Waste water]	Belt Press, Filter Press, or Plate and Frame	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100

Disinfection

No.	Media	Property	Description	%
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or wastewater.	100
W-22	Water	Electrolytic Disinfection	Disinfect water by the use of electrolytic cells.	100
W-23	Water	Ozonization	Equipment that generates ozone for the disinfection of wastewater.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of ultraviolet light.	100

No.	Media	Property	Description	%
W-25	Water	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection.	100

Biological Systems

No.	Media	Property	Description	%
W-30	Water	Activated Sludge	Wastewater treatment using microorganisms to metabolize biodegradable organic matter in aqueous waste streams. Can include tanks, aeration equipment, clarifiers, and equipment used to handle sludge.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic contaminants from wastewater.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100
W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio- film of microorganisms that promote biological purification of the wastewater.	100
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio- filters to remove sediment and other pollutants from wastewater or stormwater.	100
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100

Other Equipment

No.	Media	Property	Description	%
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from wastewater. May be used in either fixed or fluidized beds.	100
W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100

No.	Media	Property	Description	%
W-54	Water	Filters: Sand, Gravel, or Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes from wastewater.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use gray water or storm water to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities (including on-site septic systems) constructed to process wastewater generated on site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-64	Water	Storm Water Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-65	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-66	Water	Oil/Water Separator	Mechanical device used to separate oils from storm water.	100

Control/Monitoring Equipment

No.	Media	Property	Description	%
W-70	Water	pH Meter, Dissolved Oxygen Meter, or Chart Recorder	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or CO ₂ [carbon dioxide (CO ₂)] release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only land that is actually occupied by the diversion or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

Solid Waste Management [management]

No.	Media	Property	Description	%
S-1	Land / Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, or grinding of self-generated waste material for the purpose of disposal.	100
S-2	Land / Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles that leave the facility.	100
S-3	Land / Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, and controls.	100
S-4	Land / Water / Air	Monitoring and Control Equipment	Alarms, indicators, and controllers, for high liquid level, pH, temperature, or flow in waste treatment system. Does not include fire alarms.	100
S-5	Land / Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100

No.	Media	Property	Description	%
S-6	Land / Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent groundwater or soil contamination.	100
S-7	Land / Water	Linings (Noncommercial Landfills and Impoundments)	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment or landfill.	100
S-8	Land / Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, and piping.	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (Noncommercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, and a biotic barrier.	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit (e.g., below the treatment zone of a land treatment unit).	100
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit (e.g., detection monitoring systems or compliance monitoring systems).	100
S-13	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-14	Land / Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and groundwater.	100
S-15	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants (e.g., pump-and-treat systems).	100
S-16	Water	Noncommercial Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, and monitoring equipment.	100

No.	Media	Property	Description	%
S-17	Land / Water	Noncommercial Landfills (used for disposal of self-generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-18	Land / Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of 30 TAC Chapter 335, Subchapter O - Land Disposal Restrictions, §335.431.	100
S-19	Land / Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, and pumps.	100
S-20	Land / Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, and vent controls (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities).	100
S-21	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities).	100
S-22	Water	Double-Hulled Barge	If double-hulled to reduce chance of leakage into public waters, calculate the incremental cost difference between a single-hulled barge and a double-hulled barge.	100
S-23	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-24	Land	Compost Application Equipment	Equipment used to apply compost that has been generated on-site.	100
S-25	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-26	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-27	Air / Water / Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100

No.	Media	Property	Description	%
S-28	Land	Fencing installed for the control of windblown trash or access control.	Fencing installed at landfills, solid waste transfer stations, or storage/treatment areas located at hazardous waste management facilities to meet environmental regulations.	100
<u>S-29</u>	<u>Land / Water</u>	<u>Reclamation Equipment</u>	<u>Construction type equipment such as dozers, front-end loaders and dump trucks used exclusively for land reclamation. Does not include commercial reclamation equipment.</u>	<u>100</u>

Miscellaneous Pollution Control Equipment

No.	Media	Property	Description	%
M-1	Air / Land / Water	Spill Response/ Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, vacuum trailers, storage sheds, diversion basins, tanks, and dispersants.	100
M-2	Air / Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, and Disposal Containers.	100
M-3	Air / Land / Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Air / Land / Water	Solvent Recovery Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation, by filtration, or by other means. The recycled solvents must be reused at the facility generating the waste.	100
M-6	Land / Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-7	Air	Environmental Paving Located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted air quality rule, regulation, or law. Does not include paving of parking areas or driveways for convenience purposes or storm water control. Does not include dirt or gravel. Value of the paving must be stated on a square foot basis with a plot plan provided that shows the paving in question.	100
M-8	Air / Land / Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, wastewater, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-9	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-10	Land / Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100

M-11	Land / Water	Structures, Enclosures, Containment Areas, Pads for Composting Operations	Required to meet 'no exposure' storm water regulations.	100
M-12	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of waste material on site. Methane must be sent to a control device rather than used.	100
M-13	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, and Degasser.	100
M-14	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Units, and Choke Manifold Systems.	100
M-15	Air	Odor Neutralization and Chemical Treatment Systems	Carbon adsorption, zeolite adsorption, and other odor neutralizing and chemical treatment systems to meet local ordinance or to prevent/correct nuisance odors at off-site receptors.	100
M-16	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-17	Air	Low NO _x Combustion System for Drilling Rigs	Equipment on power generating units designed solely to reduce NO _x generation	100
M-18	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-19	Land	Cathodic Protection	Cathodic protection installed to prevent corrosion of metal tanks and piping.	100
M-20	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-21	Water / Land	Double-walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed to prevent unauthorized discharges.	100
M-22	Water / Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges.	100

M-23	<u>Land / Water / Air</u>	<u>Remote Controlled Block Valves</u>	<u>Valves installed on pipelines used to transport hydrocarbons and natural gas as a spill control measure.</u>	<u>100</u>
M-24	<u>Land / Water</u>	<u>Nondestructive Pipeline Testing</u>	<u>Expenditures for nondestructive pipeline testing such as radiography. Expenditures for non-pollution control purposes are not included.</u>	<u>100</u>

Equipment Located at Tank Installations including Service Stations

Spill and Overfill Prevention Equipment

No.	Media	Property	Description	%
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100

Secondary Containment

No.	Media	Property	Description	%
T-10	Water	Double-walled Tanks	The difference between cost of single-walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges or leaks.	100
T-11	Water	Double-walled Piping	The difference between cost of single-walled piping and the cost of double-walled piping, when the double-walled piping is installed to prevent unauthorized discharges or leaks.	100
T-12	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-13	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-14	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100

No.	Media	Property	Description	%
T-15	Land / Water	Concrete Paving Above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the service station. This item only applies to service stations.	100

Release Detection for Tanks and Piping

No.	Media	Property	Description	%
T-20	Water	Automatic Tank Gauging	Includes tank gauging probe and control console	100
T-21	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation	100
T-22	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping	100
T-23	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-24	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-25	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100

Cathodic Protection

No.	Media	Property	Description	%
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from aboveground tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100

Emissions Control Equipment

No.	Media	Property	Description	%
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum- assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Figure: 30 TAC §17.17(b)

[Figure: 30 TAC §17.17(b)]

Expedited Review List

No.	Property	Description
B-1	Coal Cleaning or Refining Facilities	Used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants.
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	Combustion systems that reduce pollution through the use of a fluidized bed that can be atmospheric and bubbling or circulating; gasification combined cycle systems; or pressurized and bubbling or circulating systems.
B-3	Ultra-Supercritical Pulverized Coal Boilers	Boiler system designed to provide 4500 pounds per square inch gauge (psig)/1100°/1100°/1100° double reheat configuration.
B-4	Flue Gas Recirculation Components	Ductwork, blowers, and ancillary equipment used to redirect part of the flue gas back to the combustion chamber for reduction of nitrogen oxides (NOx) formation. May include fly ash collection in coal fired units.
B-5	Syngas Purification Systems and Gas-Cleanup Units	A system, including all necessary appurtenances, that (1) produces synthesis gas from coal, biomass, petroleum coke, or solid waste and is then converted to electricity via combined cycle power generation equipment and (2) equipment that removes sulfur, carbon, and other polluting compounds from synthesis gas streams.
B-6	Enhanced Heat Recovery Systems	A heating system used to reduce the temperature and humidity of the exhaust gas stream and recover the heat so that it can be returned to the steam generator so as to increase the quantity of steam generated per quantity of fuel consumed.
B-7	Exhaust Heat Recovery Boilers	Used to recover the heat from boiler to generate additional steam.
B-8	Heat Recovery Steam Generators	A boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions. [A counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and economizer tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas turbine exhaust gas.]

No.	Property	Description
B-9	Heat Transfer Sections for Heat Recovery Steam Generators	Super-heaters, Evaporators, Re-heaters and Economizers.
B-10	Enhanced Steam Turbine Systems	Enhanced efficiency steam turbines.
B-11	Methanation	Coal Gasification process that removes carbon and produces methane, including the necessary support systems and appurtenances.
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	Used for handling, storage, or treatment of by-products or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur.
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	Installed to reduce pollution by using biomass as a supplementary fuel.
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology	Used to produce a cleaner burning coal (such as coal drying, moisture reduction, air jigging, precombustion decarbonization, or coal flow balancing technology).
B-15a	Oxy-Fuel Combustion Technology	Installed to allow the feeding of oxygen, rather than air, and a proportion of recycled flue gases to the boiler.
B-15b	Amine or Chilled Ammonia Scrubbing	Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant).
B-15c	Catalyst based Systems	Installed to allow the use of catalysts to reduce emissions.
B-15d	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.
B-15e	Modified Combustion Technologies	Systems such as chemical looping and biomass co-firing that are designed to enhance pollutant removal.
B-15f	Cryogenic Technology	Cryogenic cooling systems used to reduce pollution (including carbon dioxide upon the effective date of a final rule adopted by the EPA regulating carbon dioxide as a pollutant).
B-16	Carbon Dioxide Capture and Geological Sequestration Equipment	Used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is then geologically sequestered in this state. (This item is only in effect upon the effective date of an EPA final rule regulating carbon dioxide as a pollutant.)

No.	Property	Description
B-17	Fuel Cells	Used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.
B-18	Regulated Air Pollutant Control Equipment	Any other facility, device, or method designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

Figure: 30 TAC §18.25(a)

[Figure: 30 TAC §18.25(a)]

Tier I Table

The property listed in this table is property that the executive director has determined is used wholly or partly for pollution control purposes when used as shown in the Description section of the table and when no marketable product arises from using the property, except heat recovery steam generators listed as a partial use percentage. The items listed are described in generic terms without the use of brand names or trademarks. The use percentages on all property on the table are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner (*e.g.*, use in production or recovery of a marketable product), the executive director may require that a Tier II application, using the Cost Analysis Procedure, be filed by the applicant to calculate the appropriate use determination percentage. For items where the description limits the use determination to the incremental cost difference, the cost of the property or device with the pollution control feature is compared to a similar device or property without the pollution control feature. The table is a list adopted under Texas Tax Code, §11.31(g).

Air Pollution Control Equipment

Particulate Control Devices

No.	Media	Property	Description	%
A-1	Air	Dust Collection Systems	Structures containing filters, blowers, ductwork - used to remove particulate matter from exhaust gas streams in order to prevent release of particulate matter to ambient air.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges - used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection created by an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators with blowers and ductwork used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high- pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, and blowers needed for the equipment to function.	100
A-6	Air	Water/ Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, and pumps used to reduce fugitive particulate emissions	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units to control particulate emissions and opacity on start-up.	100

Combustion Based Control Devices

No.	Media	Property	Description	%
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, and blowers used to destroy air contaminants in a vent gas stream.	100

Non-Volatile Organic Compounds Gaseous Control Devices

No.	Media	Property	Description	%
A-40	Air	Molecular Sieve	Microporous filter used to remove hydrogen sulfide (<u>H₂S</u>) [(H ₂ S)] or nitrogen oxides (<u>NO_x</u>) [(NO _x)] from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC, or other refrigerant, where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
A-43	Air	Halon Replacement Projects	All necessary equipment needed to replace the Halon in a fire suppression system with an environmentally cleaner substance.	100

Monitoring and Sampling Equipment

No.	Media	Property	Description	%
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations of regulated air contaminants, (including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, and other meters for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, and power	100

No.	Media	Property	Description	%
			supplies used to monitor for levels of contaminants in ambient air.	
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used solely to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67	Air	Automotive Dynamometers	Automotive dynamometers used for emissions testing of fleet vehicles.	100

Nitrogen Oxides Controls

No.	Media	Property	Description	%
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce nitrogen oxides (NO_x) [NO_x] emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x [NO_x] emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston- Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x [NO_x] formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork and blowers used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x [NO_x] formation. May include fly ash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, and pumps to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO_x formation.	100
A-85	Air	Over-fire Air & Combination of asymmetric over-fire air with the injection of anhydrous ammonia or other	The asymmetric over-fire air layout injects preheated air and anhydrous ammonia or other pollutant-reducing agent through nozzles through a series of ducts, dampers, expansion joints, and valves.	100

No.	Media	Property	Description	%
		pollutant- reducing agents		
A-86	Air	<u>Low-NO_x [Low-NO_x] Burners</u>	Installation of <u>low-NO_x [low-NO_x] burners</u> . The eligible portion is the incremental cost difference. For a replacement burner, the incremental cost difference is calculated by comparing the cost of the new burner with the cost of the existing burner. For new installations, the incremental cost difference is calculated by comparing the cost of the new burner to the cost of a similarly sized burner without <u>NO_x [NO_x] controls</u> from the most recent generation of burners.	100
A-87	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots, thereby reducing <u>NO_x [NO_x] formation</u> .	100
A-88	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing <u>NO_x [NO_x] including directly related equipment</u> .	100
A-89	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or <u>NO_x [NO_x] control</u> .	100
<u>A-90</u>	<u>Air</u>	<u>Dry Low-NO_x Emissions Systems</u>	<u>Equipment installed on natural gas-fired compression turbines to reduce NO_x emissions including combustor liners, injectors, fuel conditioning system, fuel ring, fuel control valve, pilot valve, sensors, controls, fuel gas treater, fuel nozzle assemblies, transition piece assemblies, cap assemblies, inner crossfire tubes and outer crossfire tubes.</u>	<u>100</u>
<u>A-91</u>	<u>Air</u>	<u>Lean-Burn Portions of Reciprocating Engines</u>	<u>Turbocharger, fuel injection system consisting of fuel nozzles positioned within a pre-combustion chamber, and pre-combustion chamber for engines.</u>	<u>100</u>
<u>A-92</u>	<u>Air</u>	<u>Heat Recovery Steam Generators</u>	<u>A boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions.</u>	<u>65</u>

Volatile Organic Compounds Control

No.	Media	Property	Description	%
A-110	Air	Carbon Adsorption Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove volatile organic compounds (VOC) emissions and odors from exhaust gas streams.	100
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks.	100

No.	Media	Property	Description	%
A-112	Air	Replacement of Existing Pumps, Valves, or Seals in Piping Service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive VOC emissions. New systems do not qualify for this item.	100
A-113	Air	Welding of Pipe Joints in VOC Service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints to eliminate fugitive emission leaks.	100
A-114	Air	Welding of Pipe Joints in VOC Service (New Construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	External Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks. Must be installed to meet or exceed §115.112 of this title (relating to Control Requirements).	100
<u>A-116</u>	<u>Air</u>	<u>Fixed Storage Tank Roofs</u>	<u>Fixed roofs installed on external floating roof tanks used to store any product containing VOC as an additional VOC control measure.</u>	<u>100</u>
<u>A-117</u>	<u>Air</u>	<u>Geodesic Domes</u>	<u>Geodesic domes installed on external floating roof storage tanks as a means of controlling VOC emissions.</u>	<u>100</u>
<u>A-118</u>	<u>Air</u>	<u>Submerged Fill Pipes</u>	<u>Submerged fill pipes installed in storage tanks used to store any product containing VOC.</u>	<u>100</u>
<u>A-119</u>	<u>Air</u>	<u>Dual Mechanical Pump Seals</u>	<u>The incremental cost difference between the cost of dual mechanical seal pumps and comparable single sealed pumps.</u>	<u>100</u>
<u>A-120</u>	<u>Air</u>	<u>Seal-Less Pumps</u>	<u>The incremental cost difference between the cost of seal-less pumps and the cost of similarly sized pumps with seals.</u>	<u>100</u>

Mercury Control

No.	Media	Property	Description	%
A-130	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically react to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include: pumps, tanks, blowers, nozzles, ductwork, hoppers, and particulate collection devices needed for the equipment to function.	100
A-131	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-132	Air	Mercury Absorbing Filters	Filters that absorb mercury such as those using the affinity between mercury and metallic selenium.	100

No.	Media	Property	Description	%
A-133	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives that can be added to the flue gas or directly to the fuel.	100
A-134	Air	Photochemical Oxidation	Use of an ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury. These units are only eligible if mercury is removed from flue gas.	100
A-135	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive, which is then removed in a particulate removal device.	100

Sulfur Oxides Controls

No.	Media	Property	Description	%
A-160	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
A-161	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce sulfur oxide emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100

Miscellaneous Control Equipment

No.	Media	Property	Description	%
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, blowers, hoods, and ducts used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stack extensions to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, and compressors used to capture a waste gas or liquid stream and vent to a control device, including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100

No.	Media	Property	Description	%
A-185	Air	Paint Booth Control Devices	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
A-186	Air	Blast Cleaning System - Connected to a Control Device	Particulate control device and blast material recycling system.	100
A-187	Air	Amine or Chilled Ammonia Scrubber	Installed to provide post combustion capture of pollutants (including carbon dioxide (CO ₂) upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating CO ₂ [carbon dioxide] as a pollutant).	100
A-188	Air	Catalyst-based Systems	Installed to allow the use of catalysts to reduce pollutants in emission streams.	100
A-189	Air	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.	100
A-190	Air	Airless Paint Spray Gun	<u>The incremental cost difference between an airless paint spray gun and a comparable standard air powered paint spray gun.</u>	<u>100</u>

Water and Wastewater Pollution Control Equipment

Solid Separation and De-watering

No.	Media	Property	Description	%
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Wastewater [Waste water]	CPI Separator	Mechanical oil, water, and solids separator.	100
W-3	Wastewater [Waste water]	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Wastewater [Waste water]	Skimmer	Used to remove hydrocarbon from process wastewater.	100
W-5	Wastewater [Waste water]	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Wastewater [Waste water]	Belt Press, Filter Press, or Plate and Frame	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids	100

W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100

Disinfection

No.	Media	Property	Description	%
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or wastewater.	100
W-22	Water	Electrolytic Disinfection	Disinfect water by the use of electrolytic cells.	100
W-23	Water	Ozonization	Equipment that generates ozone for the disinfection of wastewater.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of ultraviolet light.	100
W-25	Water	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection.	100

Biological Systems

No.	Media	Property	Description	%
W-30	Water	Activated Sludge	Wastewater treatment using microorganisms to metabolize biodegradable organic matter in aqueous waste streams. Can include tanks, aeration equipment, clarifiers, and equipment used to handle sludge.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic contaminants from wastewater.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100
W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio- film of microorganisms that promote biological purification of the wastewater.	100
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio- filters to remove sediment and other pollutants from wastewater or stormwater.	100
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100

Other Equipment

No.	Media	Property	Description	%
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from wastewater. May be used in either fixed or fluidized beds.	100
W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, or Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes from wastewater.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater, use gray water, or storm water, to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities (including on-site septic systems) constructed to process wastewater generated on site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-64	Water	Storm Water Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100

No.	Media	Property	Description	%
W-65	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-66	Water	Oil/Water Separator	Mechanical device used to separate oils from storm water.	100

Control/Monitoring Equipment

No.	Media	Property	Description	%
W-70	Water	pH Meter, Dissolved Oxygen Meter, or Chart Recorder	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or CO ₂ [carbon dioxide] release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only land that is actually occupied by the diversion or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

Solid Waste Management

No.	Media	Property	Description	%
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, or grinding of self-generated waste material for the purpose of disposal.	100
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles that leave the facility.	100
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, and controls.	100

No.	Media	Property	Description	%
S-4	Land/ Water/Air	Monitoring and Control Equipment	Alarms, indicators, and controllers, for high liquid level, pH, temperature, or flow in waste treatment system. Does not include fire alarms.	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent groundwater or soil contamination.	100
S-7	Land/ Water	Liners (Noncommercial Landfills and Impoundments)	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment or landfill.	100
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, and piping.	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (Noncommercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, and a biotic barrier.	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit (e.g., below the treatment zone of a land treatment unit).	100
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit (e.g., detection monitoring systems or compliance monitoring systems).	100
S-13	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-14	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and groundwater.	100
S-15	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants (e.g., pump-and-treat systems).	100
S-16	Water	Noncommercial Injection Wells (Including	Injection well, pumps, collection tanks and piping, pretreatment equipment, and monitoring equipment.	100

No.	Media	Property	Description	%
		Saltwater Disposal Wells) and Ancillary Equipment		
S-17	Land/ Water	Noncommercial Landfills (used for disposal of self-generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-18	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of 30 TAC Chapter 335, Subchapter O - Land Disposal Restrictions, §335.431.	100
S-19	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, and pumps.	100
S-20	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, and vent controls (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities).	100
S-21	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities).	100
S-22	Water	Double-Hulled Barge	If double-hulled to reduce chance of leakage into public waters, calculate the incremental cost difference between a single-hulled barge and a double-hulled barge.	100
S-23	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-24	Land	Compost Application Equipment	Equipment used to apply compost that has been generated on-site.	100
S-25	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-26	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented	100

No.	Media	Property	Description	%
			to a dust collector, conveyor covers, and emission control devices at other points.	
S-27	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse, and recycles the water in a closed loop system.	100
S-28	Land	Fencing installed for the control of windblown trash or access control[.]	Fencing installed at landfills, solid waste transfer stations, or storage/treatment areas located at hazardous waste management facilities to meet environmental regulations.	100
S-29	Land/Water	Reclamation Equipment	Construction type equipment such as dozers, front end loaders and dump trucks used exclusively for land reclamation. Does not include commercial reclamation equipment.	100

Miscellaneous Pollution Control Equipment

No.	Media	Property	Description	%
M-1	Air/ Land/ Water	Spill Response/ Cleanup Equipment Pre- positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, vacuum trailers, storage sheds, diversion basins, tanks, and dispersants.	100
M-2	Air/ Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, and Disposal Containers.	100
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Air/ Land/ Water	Solvent Recovery Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation, by filtration, or by other means. The recycled solvents must be reused at the facility generating the waste.	100

No.	Media	Property	Description	%
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-7	Air	Environmental Paving Located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted air quality rule, regulation, or law. Does not include paving of parking areas or driveways for convenience purposes or storm water control. Does not include dirt or gravel. Value of the paving must be stated on a square foot basis with a plot plan provided that shows the paving in question.	100
M-8	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, wastewater, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-9	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-10	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-11	Land/ Water	Structures, Enclosures, Containment Areas, Pads for Composting Operations	Required to meet 'no exposure' storm water regulations.	100
M-12	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of waste material on site. Methane must be sent to a control device rather than used.	100
M-13	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, and Degasser.	100
M-14	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Units, and Choke Manifold Systems.	100
M-15	Air	Odor Neutralization and Chemical Treatment Systems	Carbon adsorption, zeolite adsorption, and other odor neutralizing and chemical treatment systems to meet local ordinance or to prevent/correct nuisance odors at off-site receptors.	100
M-16	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-17	Air	Low NO _x Combustion System for Drilling Rigs	Equipment on power generating units designed solely to reduce NO _x generation.	100

No.	Media	Property	Description	%
M-18	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-19	Land	Cathodic Protection	Cathodic protection installed to prevent corrosion of metal tanks and piping.	100
M-20	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-21	Water/ Land	Double-walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed to prevent unauthorized discharges.	100
M-22	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges.	100
M-23	<u>Land/Water/ Air</u>	<u>Remote Controlled Block Valves</u>	<u>Valves installed on pipelines used to transport hydrocarbons and natural gas as a spill control measure.</u>	<u>100</u>
M-24	<u>Land/Water</u>	<u>Nondestructive Pipeline Testing</u>	<u>Expenditures for nondestructive pipeline testing such as radiography. Expenditures for non-pollution control purposes are not included.</u>	<u>100</u>

Equipment Located at Tank Installations including Service Stations

Spill and Overfill Prevention Equipment

No.	Media	Property	Description	%
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100

Secondary Containment

No.	Media	Property	Description	%
T-10	Water	Double-walled Tanks	The difference between cost of single-walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges or leaks.	100
T-11	Water	Double-walled Piping	The difference between cost of single-walled piping and the cost of double-walled piping, when the double-walled piping is installed to prevent unauthorized discharges or leaks.	100
T-12	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-13	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-14	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-15	Land/ Water	Concrete Paving Above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the service station. This item only applies to service stations.	100

Release Detection for Tanks and Piping

No.	Media	Property	Description	%
T-20	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-21	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-22	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-23	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-24	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-25	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100

Cathodic Protection

No.	Media	Property	Description	%
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from aboveground tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100

Emissions Control Equipment

No.	Media	Property	Description	%
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum- assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Figure: 30 TAC §18.26

[Figure: 30 TAC §18.26]

Expedited Review List

No.	Property	Description
B-1	Coal Cleaning or Refining Facilities	Used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants.
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	Combustion systems that reduce pollution through the use of a fluidized bed that can be atmospheric and bubbling or circulating; gasification combined cycle systems; or pressurized and bubbling or circulating systems.
B-3	Ultra-Supercritical Pulverized Coal Boilers	Boiler system designed to provide 4500 pounds per square inch gauge (psig)/1100°/1100°/1100° double reheat configuration.
B-4	Flue Gas Recirculation Components	Ductwork, blowers, and ancillary equipment used to redirect part of the flue gas back to the combustion chamber for reduction of nitrogen oxides (NOx) formation. May include fly ash collection in coal fired units.
B-5	Syngas Purification Systems and Gas-Cleanup Units	A system, including all necessary appurtenances, that: (1) produces synthesis gas from coal, biomass, petroleum coke, or solid waste and is then converted to electricity via combined cycle power generation equipment; and, (2) equipment that removes sulfur, carbon, and other polluting compounds from synthesis gas streams.
B-6	Enhanced Heat Recovery Systems	A heating system used to reduce the temperature and humidity of the exhaust gas stream and recover the heat so that it can be returned to the steam generator so as to increase the quantity of steam generated per quantity of fuel consumed.
B-7	Exhaust Heat Recovery Boilers	Used to recover the heat from boiler to generate additional steam.
B-8	Heat Recovery Steam Generators	A boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions. [A counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and

No.	Property	Description
		economizer tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas turbine exhaust gas.]
B-9	Heat Transfer Sections for Heat Recovery Steam Generators	Super-heaters, Evaporators, Re-heaters and Economizers.
B-10	Enhanced Steam Turbine Systems	Enhanced efficiency steam turbines.
B-11	Methanation	Coal Gasification process that removes carbon and produces methane, including the necessary support systems and appurtenances.
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	Used for handling, storage, or treatment of by-products or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur.
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	Installed to reduce pollution by using biomass as a supplementary fuel.
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology	Used to produce a cleaner burning coal (such as coal drying, moisture reduction, air jigging, precombustion decarbonization, or coal flow balancing technology).
B-15a	Oxy-Fuel Combustion Technology	Installed to allow the feeding of oxygen, rather than air, and a proportion of recycled flue gases to the boiler.
B-15b	Amine or Chilled Ammonia Scrubbing	Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant).
B-15c	Catalyst based Systems	Installed to allow the use of catalysts to reduce emissions.
B-15d	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.
B-15e	Modified Combustion Technologies	Systems such as chemical looping and biomass co-firing that are designed to enhance pollutant removal.

No.	Property	Description
B-15f	Cryogenic Technology	Cryogenic cooling systems used to reduce pollution (including carbon dioxide upon the effective date of a final rule adopted by the EPA regulating carbon dioxide as a pollutant).
B-16	Carbon Dioxide Capture and Geological Sequestration Equipment	Used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is then geologically sequestered in this state. (This item is only in effect upon the effective date of an EPA final rule regulating carbon dioxide as a pollutant.)
B-17	Fuel Cells	Used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.
B-18	Regulated Air Pollutant Control Equipment	Any other facility, device, or method designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

APPENDIX 1 - COASTAL FACILITY DESIGNATION LINE

All areas east and south of the following boundary are considered areas in which spills may pose an imminent threat to coastal waters: beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (FM Road 1847) in Brownsville, thence northward along FM Road 1847 to the junction FM Road 106 east of Rio Hondo, thence westward along FM Road 106 to the junction of FM Road 508 in Rio Hondo, thence northward along FM Road 508 to the junction of FM Road 1420, thence northward along FM Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of FM Road 774 in Refugio, thence eastward along FM Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of FM Road 616 in Bloomington, thence northeastward along FM Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of FM Road 521 north of Palacios, thence northeastward along FM Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of FM Road 2004 in Lake Jackson, thence northeastward along FM Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northeastward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the Louisiana State Line.

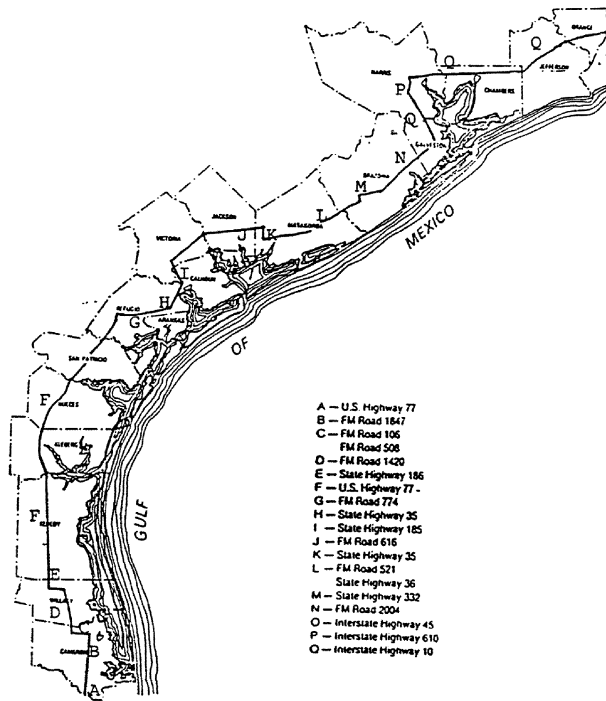
Please note that facilities north and west of the boundary are not subject to certification pursuant to OSPRA.

AREAS OF EXTENDED TIDAL INFLUENCE/IMPACT POTENTIAL

- (1) ARROYA COLORADO FROM SOUTH OF HWY 106 TO THE PORT OF HARLINGEN.
- (2) NUECES RIVER AT THE HWY 666 CROSSING OF THE NUECES RIVER.
- (3) GUADALUPE RIVER AND ASSOCIATED RIVERINE ENVIRONMENT INCLUDING THE VICTORIA BARGE CANAL TO THE HWY 175 RIVER CROSSING.
- (4) PALMETTO BEND DAM ON THE LAVACA RIVER.
- (5) TRES PALACIOS RIVER 4.0 MILES ABOVE THE HWY 521 CROSSING.
- (6) COLORADO ABOVE THE PORT OF BAY CITY 1.3 MILES SOUTH OF THE MISSOURI-PACIFIC RAILROAD.
- (7) SAN BERNARD TO TIDAL 2 MILES UPSTREAM OF HWY 35 CROSSING.
- (8) CHOCOLATE BAYOU TO TIDAL 2.6 MILES DOWNSTREAM OF HWY 35.
- (9) BUFFALO BAYOU 6.5 MILES WEST OF THE TURNING BASIN.
- (10) SAN JACINTO RIVER TO THE LAKE HOUSTON DAM.
- (11) TRINITY RIVER TO 1.9 MILES SOUTH OF HWY 90 IN LIBERTY COUNTY.
- (12) NECHES RIVER 7 MILES UPSTREAM OF IH-10.
- (13) SABINE RIVER TO MORGAN BLUFF

Figure: 31 TAC §19.2(a)(22)

NOTE: AREAS OF EXTENDED TIDAL INCLUDE WATERWAYS AND FACILITIES 100 YARDS LANDWARD FROM CUT BANK.





IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Capital Area Rural Transportation System

RFP - General Contractors for Elgin Station

Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the Construction of the CARTS's Elgin Station in Elgin, Texas.

RFP and Construction Documents will be available on the CARTS Website beginning at 2:00 p.m., Tuesday, July 21st, 2020, Go to: <http://ridecarts.weebly.com/procurement.html>, select the **Elgin Station** link and follow the instructions.

A non-mandatory pre-proposal meeting will be held Virtually at 11:00 a.m., July 28, 2020. Link to the event will be posted in the RFP.

The schedule is:

Tuesday, July 21 2:00 p.m. - RFP Documents available for download

Tuesday, July 28 11:00 a.m. - Virtual pre-proposal conference

Tuesday, August 11 2:00 p.m. - Deadline for proposal questions

Friday, August 14 5:00 p.m. - Responses to questions posted on website

Thursday, August 20 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality, and content of the submittal.

TRD-202002976

David Marsh

General Manager

Capital Area Rural Transportation System

Filed: July 20, 2020



Central Texas Regional Mobility Authority

Request for Qualifications to Provide Traffic and Revenue Engineering Services

RFQ Issue Date: 7/20/20

Response Due: 4:00 p.m. CDST 8/17/20

Central Texas Regional Mobility Authority

3300 N IH 35 Suite 300

Austin, Texas 78705

Attn: William Chapman

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

TRAFFIC AND REVENUE ENGINEERING SERVICES

REQUEST FOR QUALIFICATIONS

The Central Texas Regional Mobility Authority (CTRMA) is requesting information from professional firms interested in providing the CTRMA with traffic and engineering services. The firm(s) will be responsible for conducting complex traffic modeling and forecasting, including forecasting of revenues for bond-financed toll projects, and

rendering opinions and other analyses concerning traffic and revenue projections as required under a trust agreement governing CTRMA's revenue bond financing for current and future projects.

Firms submitting qualifications must be an independent engineering firm with a nationwide and favorable reputation for skill and experience in traffic engineering, and recent and extensive experience in transportation and toll applications, complex modeling and forecasting tools, and demonstrated success in forecasting revenues generated by bond-financed transportation projects.

The CTRMA is seeking to hire Traffic and Revenue consultants and to establish a pool of qualified firms to provide such services.

TRD-202002977

William Chapman

Chief Financial Officer

Central Texas Regional Mobility Authority

Filed: July 20, 2020



Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - June 2020

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period June 2020 is \$17.62 per barrel for the three-month period beginning on March 1, 2020, and ending May 31, 2020. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of June 2020, from a qualified low-producing oil lease, is eligible for a 100% credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period June 2020 is \$0.81 per mcf for the three-month period beginning on March 1, 2020, and ending May 31, 2020. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2020, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of June 2020 is \$38.31 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from oil produced during the month of June 2020, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of June 2020 is \$1.70 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from

gas produced during the month of June 2020, from a qualified low-producing gas well.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

TRD-202002933

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Filed: July 16, 2020

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/27/20 - 08/02/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/27/20 - 08/02/20 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/20 - 08/31/20 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/20 - 08/31/20 is 5.00% for commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202002986

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 21, 2020

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 31, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commissions orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **August 31, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2019-1597-PWS-E; IDENTIFIER: RN106081631; LOCATION: Liberty Hill, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as firefighting; PENALTY: \$1,526; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: BRM Trucking & Construction LLC; DOCKET NUMBER: 2020-0183-WQ-E; IDENTIFIER: RN110900222; LOCATION: New Berlin, Guadalupe County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Chevron U.S.A. Incorporated; DOCKET NUMBER: 2020-0450-AIR-E; IDENTIFIER: RN102535796; LOCATION: Midland, Andrews County; TYPE OF FACILITY: natural gas facility; RULES VIOLATED: 30 TAC §106.6(b) and (c), Permit by Rule Registration Number 138241, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$1,175; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(4) COMPANY: El Paso County; DOCKET NUMBER: 2020-0555-PWS-E; IDENTIFIER: RN102676038; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: \$713; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2020-0524-AIR-E; IDENTIFIER: RN100221662; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent the discharge from any source whatsoever one or more air contaminants or combinations thereof in such concentration and of such duration as are or may tend to adversely affect human health; PENALTY: \$8,175; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,270; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: ERB Enterprises, Incorporated dba Mr. Zip #5; DOCKET NUMBER: 2020-0293-PST-E; IDENTIFIER: RN102035045; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Ferguson, Howard D; DOCKET NUMBER: 2020-0619-WOC-E; IDENTIFIER: RN104569611; LOCATION: College Station, Brazos County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Garney Companies, Incorporated; DOCKET NUMBER: 2020-0025-WQ-E; IDENTIFIER: RN109669895; LOCATION: Elgin, Lee County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXR15743A, Part III, Section F(2)(c)(i)(B) and F(6)(a), by failing to install and maintain best management practices at the site which resulted in an unauthorized discharge of sediment; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: John C. Rothermel; DOCKET NUMBER: 2020-0510-WOC-E; IDENTIFIER: RN110945490; LOCATION: Moody, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a) and §30.81(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(d), by failing to have a valid, applicable customer service inspector license issued by the commission or a plumbing inspector or water supply protection specialist license issued by the Texas State Board of Plumbing Examiners prior to conducting and certifying Customer Service Inspections; PENALTY: \$762; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Jonestown Water Supply Corporation; DOCKET NUMBER: 2020-0508-PWS-E; IDENTIFIER: RN100824911; LOCATION: Jonestown, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) for Stage 2 Disinfection Byproducts at Site 1 during the fourth quarter of 2019; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for TTHM, based on the locational running annual average; PENALTY: \$2,512; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(11) COMPANY: MONTEREY MUSHROOMS, INCORPORATED; DOCKET NUMBER: 2020-0132-IWD-E; IDENTIFIER: RN100831312; LOCATION: Madisonville, Madison County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001896000, Outfall

Numbers 001, 002 and 005, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$26,562; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$13,281; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Monument Chemical Houston, LLC; DOCKET NUMBER: 2020-0168-AIR-E; IDENTIFIER: RN100219237; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(3)(ii), New Source Review Permit Number 6283, Special Conditions Number 16.A, Federal Operating Permit Number O1596, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 19, and Texas Health and Safety Code, §382.085(b), by failing to maintain the minimum net heating value of the gas stream to be burned by a flare at or above 300 British thermal units per standard cubic foot; PENALTY: \$3,075; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,230; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: North Orange Water & Sewer, LLC; DOCKET NUMBER: 2020-0567-PWS-E; IDENTIFIER: RN101176139; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iii), and (B)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11642 for the 2019 calendar year; PENALTY: \$840; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Robbie Robinson Ltd.; DOCKET NUMBER: 2020-0632-WOC-E; IDENTIFIER: RN109151530; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: San Antonio River Authority; DOCKET NUMBER: 2020-0629-MWD-E; IDENTIFIER: RN101514347; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010749003, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Santa Rita Commercial, LLC; DOCKET NUMBER: 2020-0277-EAQ-E; IDENTIFIER: RN110949310; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: commercial development; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Alejandro

Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(17) COMPANY: Schumacher Co., LLC; DOCKET NUMBER: 2020-0483-AIR-E; IDENTIFIER: RN100917970; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal electro-plating facility; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 52505, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$3,773; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Superior Silica Sands LLC; DOCKET NUMBER: 2020-0327-WQ-E; IDENTIFIER: RN100846443; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXR05DH58, Part III, Section A.4(a)(9) and A.4(c), by failing to install and maintain best management practices at the site which resulted in an unauthorized discharge; PENALTY: \$1,213; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: TCHMALL Sports, LLC; DOCKET NUMBER: 2018-0834-EAQ-E; IDENTIFIER: RN106507676; LOCATION: Bee Cave, Travis County; TYPE OF FACILITY: indoor recreational facility; RULES VIOLATED: 30 TAC §213.23(i) and Edwards Aquifer Contributing Zone Plan (CZP) Number 11-12090501, Standard Condition Number 4, by failing to obtain approval of a modification to an approved Edwards Aquifer CZP prior to initiating a regulated activity over the Edwards Aquifer contributing zone; PENALTY: \$2,813; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,125; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(20) COMPANY: Windy Hill Utility Co. LLC; DOCKET NUMBER: 2020-0222-MWD-E; IDENTIFIER: RN109208553; LOCATION: Kyle, Hays County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015478001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$6,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,500; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202002978

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 21, 2020



Amended Notice of Public Meeting for Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 159336

Application. AmeriTex Pipe & Products, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 159336, which would authorize construction of two permanent concrete batch

plants located approximately 2,200 feet southeast of the McDonald Road and Wall Street Road intersection, Gunter, Grayson County, Texas 75058. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-96.772777%2C33.480555&level=12>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate.

Public Comment/Public Meeting. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, August 13, 2020 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 641-116-771. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (213) 929-4212 and enter access code 966-300-581.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

Information. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The executive director has made a preliminary decision to issue the registration because it meets all applicable rules. The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and the Gunter Library and Museum, 110 South Highway 289, Suite 4, Gunter, Grayson, Texas. If the public viewing place at the library is closed to the public, then the required documents can be viewed online at <https://tinyurl.com/yblh285w>. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from AmeriTex Pipe & Products, LLC, P.O. Box 150, Seguin, Texas 78156-0150 or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: July 22, 2020

TRD-202003002

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2020



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 161768

APPLICATION. Precision Ready Mix LTD, 8790 Farm-to-Market Road 471 North #2, San Antonio, Texas 78253-6969 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for Concrete Batch Plant with Enhanced Controls Registration Number 161768 to authorize the operation of two permanent concrete batch plants. The facility is proposed to be located at 6270 Farm-to-Market Road 471 North, Rio Medina, Medina County, Texas 78066. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.479184&lng=-98.85144&zoom=13&type=r>. This application was submitted to the TCEQ on June 11, 2020. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on July 2, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing.

Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, September 1, 2020, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 414-451-859. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (914) 614-3221 and enter access code 403-451-672. Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ San Antonio Regional Office, located at 14250 Judson Rd., San Antonio, Texas 78233-4480, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. *Si desea información en español, puede llamar al (800) 687-4040.*

Further information may also be obtained from Precision Ready Mix LTD, 8790 Farm-to-Market Road 471 North #2, San Antonio, Texas 78253-6969, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: July 14, 2020

TRD-202002992

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2020



Notice of Correction to Enforcement Order 2019-0064-PST-E

In the July 10, 2020, issue of the *Texas Register* (45 TexReg 4828), the Texas Commission on Environmental Quality (Commission) published notice of Enforcement Orders, specifically Docket No. 2019-0064-PST-E, for A A & R Business Investments Inc dba Quick Step N Save. The error is as submitted by the commission. The reference to the "Default and Shutdown Order" should be corrected to read "Default Order". For questions concerning these errors, please contact Meghan Taack at (512) 239-3300.

TRD-202002995

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2020



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 31, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 31, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of La Joya; DOCKET NUMBER: 2019-1241-PWS-E; TCEQ ID NUMBER: RN101276863; LOCATION: United States Highway 83, approximately 0.1 miles west of Farm Road 2221,

La Joya, Hidalgo County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.112(e) and (f)(2), by failing to submit a Total Organic Carbon Monthly Operating Report with the required total organic carbon and alkalinity sampling data to the executive director (ED) each month by the tenth day of the month following the end of the reporting period during the second quarter of 2019; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and by failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2018 - June 30, 2018, monitoring period; 30 TAC §290.271(b) and §290.274 (a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill-paying customer by July 1st for each year, and by failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data, for the calendar year 2017; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to conduct an operation evaluation and submit a written operation evaluation to the ED within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes for Stage 2 Disinfection Byproducts at Site 1 and 2 during the fourth quarter of 2017, and regarding the failure to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the ED for the July 1, 2017 - December 31, 2017, monitoring period; PENALTY: \$1,237; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: GO GREEN & RECYCLE, LLC; DOCKET NUMBER: 2017-1707-MLM-E; TCEQ ID NUMBER: RN109733956; LOCATION: 2130 Austin Street, San Angelo, Tom Green County; TYPE OF FACILITY: glass processing facility; RULES VIOLATED: TWC, §26.121, 40 Code of Federal Regulations §122.26(c), and 30 TAC §281.25(a)(4), by failing to obtain authorization under a Texas Pollutant Discharge Elimination System General Permit to discharge stormwater associated with industrial activities; Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants. Specifically, respondent began operating a glass pulverizing machine and vibratory screener at the site prior to obtaining the proper authorization; and 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste. Specifically, approximately 2,346 cubic yards of glass and glass bottles were disposed of on the ground at the site; PENALTY: \$16,480; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: HRH Investments, LP dba Phillips 66 Lake June; DOCKET NUMBER: 2018-0138-PST-E; TCEQ ID NUMBER: RN101431930; LOCATION: 8470 Lake June Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.74(3), by failing to file a report not later than 45 days

after the first observation of a suspected release which contains detailed description of the procedures followed while investigating it; and 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report suspected releases to the TCEQ within 24 hours and 72 hours of discovery as required. Specifically, the statistical inventory reconciliation (SIR) records for the unleaded UST showed an inconclusive result for December 2016, and SIR records for the premium unleaded UST indicated a failing result for December 2016, which were not reported; PENALTY: \$5,859; STAFF ATTORNEY: Vas Manthos, Litigation Division, MC 175, (512) 239-0181; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202002980

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 21, 2020



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 31, 2020**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 31, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Rose Bailey; DOCKET NUMBER: 2019-0346-MSW-E; TCEQ ID NUMBER: RN105843106; LOCATION: 604 Bristow Road near San Angelo, Tom Green County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing,

suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$5,249; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: WELLS LANDING PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2018-0964-MSW-E; TCEQ ID NUMBER: RN110835469; LOCATION: Wells Landing Subdivision Roads and Streets near Onalaska, Polk County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,250; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202002981

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 21, 2020



Notice of Public Comment on Proposed Revisions to 30 TAC Chapter 30

The Texas Commission on Environmental Quality (commission) is accepting written comments regarding proposed amendments to §§30.20, 30.24, 30.33, 30.36, 30.81, 30.95, 30.129, and 30.402, and the proposal of new §30.29 of 30 Texas Administrative Code (TAC) Chapter 30, Occupational Licenses and Registration.

The proposed rulemaking would implement House Bill (HB) 1508, 85th Texas Legislature, 2017, relating to notice to applicants regarding the consequences of a criminal conviction on eligibility for an occupational license; and HB 1342, Senate Bill (SB) 37, and SB 1217, 86th Texas Legislature, 2019, relating to notice to individuals regarding the licensing authority's intention to deny an individual a license based on criminal history, the prohibition on denying or suspending an occupational license due to an individual's default on student loans, and the prohibition on including an arrest that did not result in a conviction in a licensing authority's determination of a person's fitness to perform the duties and responsibilities of a licensed occupation. The proposed rulemaking would also include administrative changes to ensure current and accurate cross-references.

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. **All comments should reference Rule Project Number 2018-024-030-WS. The comment period closes August 31, 2020.** Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Rebecca Moore, Registration and Reporting, (512) 239-2463.

TRD-202002941

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 17, 2020



Notice of Public Comment on Proposed Revisions to 30 TAC Chapters 17 and 18

The Texas Commission on Environmental Quality (commission) is accepting written comments regarding proposed amendments to §17.14 and §17.17 of 30 Texas Administrative Code (TAC) Chapter 17, Tax Relief for Property Used for Environmental Protection; and amendments to §§18.25, 18.26, and 18.30 of 30 TAC Chapter 18, Rollback Relief for Pollution Control Requirements.

The proposed rulemaking would implement Senate Bill 2, Section 44 from the 86th Texas Legislature, 2019, Regular Session, which requires rulemaking to revise the title of Chapter 18 from Rollback Relief for Pollution Control Requirements to Voter-Approval Tax Rate Relief for Pollution Control Requirements. Additionally, the proposed rulemaking would revise the Tier I Tables in §17.14(a) and §18.25(a) consistent with the Tax Relief for Pollution Control Property Advisory Committee's formal recommendations. The proposed revisions would add heat recovery steam generators (HRSG) with a partial use determination of 65% and 11 other pollution control property items to both Tier I Tables. Other revisions are proposed to accommodate the addition of HRSGs at a partial use percentage. Finally, the proposed rulemaking would fulfill the commission's statutory and regulatory requirements to review, and update as necessary, the property included on the Chapters 17 and 18 Expedited Review Lists (ERL) and Tier I Tables. Both ERLs are proposed for revision only to establish consistency with both Tier I Tables.

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. **All comments should reference Rule Project Number 2020-031-018-AI. The comment period closes August 31, 2020.** Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Elizabeth Sartain, Air Quality Division, (512) 239-3933.

TRD-202002942

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 17, 2020



Notice of Water Quality Application

The following notice was issued on July 15, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THIS NOTICE ISSUED IN THE *TEXAS REGISTER*.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0013355001 to correct typographical errors in the 7-Day Average and Daily Maximum effluent limits for ammonia nitrogen and the effluent concentrations for the 24-hour acute biomonitoring requirements in the permit. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,350,000 gallons per day. The facility is located at 902 Tara Boulevard, Richmond in Fort Bend, County, Texas 77469.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202002993

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 21, 2020



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on July 16, 2020, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. John S. Jones dba John's Tire and Wheels dba John's Tire Shop; SOAH Docket No. 582-19-6826; TCEQ Docket No. 2018-0057-MSW-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against John S. Jones dba John's Tire and Wheels dba John's Tire Shop on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-202002994

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2020



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 6, 2020 to July 17, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, July 24, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, August 23, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Tubal-Cain Marine Services, Inc.

Location: The project site is located in Sabine Neches Canal, at 8700 Old Yacht Club Road, in Port Arthur, Jefferson County, Texas.

Latitude & Longitude (NAD 83): 29.961706, -93.859892

Project Description: This is an After-the-Fact permit application. The applicant installed 3,444' - 8" of steel sheet pile bulkhead, 65 mooring piles, dredged approximately 21,000 cubic yards of material from approximately 3.56 acres of unvegetated water bottom and placed approximately 5,839 cubic yards of fill behind the bulkhead below mean high tide (approx. 1.09 acre). The dredged material was deposited on-site in uplands and transported offsite for upland disposal.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2016-00744. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1326-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202002982

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: July 21, 2020



Texas Health and Human Services Commission

Public Notice - Amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver

The Health and Human Services Commission (HHSC) plans to submit a request to the Centers for Medicare & Medicaid Services (CMS) for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. CMS has approved this waiver through September 30, 2022.

This amendment is in response to House Bill (H.B.) 4533, SECTION 32, 86th Legislature, Regular Session, 2019 which requires HHSC to pursue a benefit for medically fragile individuals.

SECTION 32 of HB 4533 provides: "Not later than September 1, 2020, and only if the Health and Human Services Commission determines it would be cost effective, the executive commissioner of the Health and Human Services Commission shall seek a waiver or authorization from the appropriate federal agency to provide Medicaid benefits to medically fragile individuals:

- (1) who are 21 years of age or older; and
- (2) whose health care costs exceed cost limits under appropriate Medicaid waiver programs, as defined by Section 534.001, Government Code."

The medically fragile group will consist of individuals who have high medical needs based on an assessment and whose needs exceed existing program cost limits. When it is determined an individual's service plan is at or near the STAR+PLUS Home and Community-Based Services (HCBS) program cost limit (usually prior to aging out of children's Medicaid or when leaving a nursing facility), the individual may

be considered for the proposed program. If determined eligible for the program, these members will be able to access additional home and community-based services through Texas' 1115 waiver, without an individual cost limit. There will be a limit on the number of slots in this category, to be determined based on cost effectiveness.

If determined cost effective and approved by CMS, the waiver amendment proposed by HHSC will provide Medicaid HCBS to a limited number of medically fragile adults whose health care costs exceed current cost limits with an effective date of September 1, 2021.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments regarding this amendment by contacting Luis Solorio by U.S. mail, telephone, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Luis Solorio, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3449

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-202003004

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 22, 2020



Public Notice - Texas State Plan for Medical Assistance Amendments

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are part of a Special Review of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) as a result of the 21st Century Cures Act (P.L. 114-255), signed into law on December 13, 2016. The amendments are proposed to be effective August 1, 2020.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for DMEPOS and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

The proposed amendments are estimated to result in an annual aggregate savings of \$43,407 for federal fiscal year (FFY) 2020, consisting of \$29,122 in federal funds and \$14,285 in state general revenue. For FFY 2021, the estimated amendments result in an annual aggregate savings of \$260,446, consisting of \$174,733 in federal funds and \$85,713 in state general revenue. For FFY 2022, the estimated amendments result in an annual aggregate savings of \$263,337, consisting of \$176,673 in federal funds and \$86,664 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: <http://rad.hhs.texas.gov/rate-packets>.

Rate Hearing. HHSC will conduct a public rate hearing online for the proposed rate changes. For information on the date, time, and how to access the hearing, please continue to monitor the HHSC website at <https://hhs.texas.gov/about-hhs/communications-events/meetings-events>. Once available, information about the proposed rate changes and the hearing will be published in a subsequent issue of the *Texas Register* at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC, which were formerly the local offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 Brown-Heatly Building 4900 North Lamar Blvd. Austin, Texas 78751 Phone number for package delivery: (512) 730-7401

Fax Attention: Rate Analysis at (512) 730-7475

Email RADAcuteCare@hhsc.state.tx.us

TRD-202003003

Karen Ray

Chief Council

Texas Health and Human Services Commission

Filed: July 22, 2020

Texas Department of Insurance

Company Licensing

Application for Envision Insurance Company, a foreign life, accident, and/or health company, to change its name to Elixir Insurance Company. The home office is in Twinsburg, Ohio.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202003005

James Person

General Counsel

Texas Department of Insurance

Filed: July 22, 2020

Texas Department of Licensing and Regulation

Correction of Error

On July 10, 2020, the Texas Department of Licensing and Regulation filed the adoption of an amendment to 16 TAC §111.160 for publication in the July 24, 2020, issue of the *Texas Register*. This filing was assigned docket number TRD-202002845. Due to an error by the Texas Register, the adoption was published with the wrong rule number in the print version of the *Texas Register* only. The online versions of the adoption included the correct rule number. The correct rule number for this adoption is 16 TAC §111.160, not 16 TAC §111.201. The adoption of the amendment to 16 TAC §111.201 was correctly published in the July 24, 2020, print edition and was assigned docket number TRD-202002848.

TRD-202003010

Texas Lottery Commission

Scratch Ticket Game Number 2257 "LUCKY NO. 13"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2257 is "LUCKY NO. 13". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2257 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2257.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 13 SYMBOL, \$2.00, \$3.00, \$6.00, \$9.00, \$10.00, \$20.00, \$30.00, \$60.00, \$100, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2257 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
13 SYMBOL	TRP
\$2.00	TWO\$
\$3.00	THR\$
\$6.00	SIX\$
\$9.00	NIN\$
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$60.00	SXTY\$
\$100	ONHN
\$1,000	ONTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2257), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2257-0000001-001.

H. Pack - A Pack of the "LUCKY NO. 13" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LUCKY NO. 13" Scratch Ticket Game No. 2257.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LUCKY NO. 13" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the LUCKY NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "13" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$30,000 will each appear at least once, except on Tickets winning ten (10) times, with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Tickets winning more than one (1) time will use both LUCKY NUMBERS Play Symbols to create matches, unless restricted by other parameters, play action or prize structure.

G. No matching LUCKY NUMBERS Play Symbols will appear on a Ticket.

H. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$2 and 02, \$3 and 03, \$6 and 06, \$9 and 09, \$10 and 10 and \$20 and 20).

I. On all Tickets, a Prize Symbol will not appear more than one (1) time, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a LUCKY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The "13" (TRP) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

L. The "13" (TRP) Play Symbol will never appear on a Non-Winning Ticket.

M. The "13" (TRP) Play Symbol will never appear more than once on a Ticket.

N. The "13" (TRP) Play Symbol will win TRIPLE the PRIZE for that Play Symbol and will win as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY NO. 13" Scratch Ticket Game prize of \$2.00, \$3.00, \$6.00, \$9.00, \$10.00, \$18.00, \$20.00, \$30.00, \$60.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$60.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY NO. 13" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY NO. 13" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY NO. 13" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LUCKY NO. 13" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A

Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature

appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2257. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2257 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	720,000	10.00
\$3.00	364,800	19.74
\$6.00	249,600	28.85
\$9.00	163,200	44.12
\$10.00	19,200	375.00
\$18.00	57,600	125.00
\$20.00	67,200	107.14
\$30.00	8,850	813.56
\$60.00	9,150	786.89
\$100	2,880	2,500.00
\$1,000	16	450,000.00
\$30,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2257 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2257, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002983

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 21, 2020



Scratch Ticket Game Number 2262 "VETERANS CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2262 is "VETERANS CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2262 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2262.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,

21, 22, 23, 24, 25, 26, 27, 28, 29, 30, BELL SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2262 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
BELL SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN

\$1,000	ONTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2262), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2262-0000001-001.

H. Pack - A Pack of the "VETERANS CASH" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "VETERANS CASH" Scratch Ticket Game No. 2262.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "VETERANS CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-three (23) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "BELL" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-three (23) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-three (23) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-three (23) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion,

refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "BELL" (DBL) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "BELL" (DBL) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No Prize Symbol in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "VETERANS CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "VETERANS CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A

Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If

more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2262. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2262 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	624,000	9.62
\$4.00	480,000	12.50
\$5.00	96,000	62.50
\$10.00	72,000	83.33
\$20.00	48,000	125.00
\$50.00	39,650	151.32
\$100	2,650	2,264.15
\$1,000	75	80,000.00
\$30,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2262 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2262, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002984

Bob Biard

General Counsel

Texas Lottery Agency

Filed: July 21, 2020



Scratch Ticket Game Number 2269 "GIFTS GALORE"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2269 is "GIFTS GALORE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2269 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2269.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02,

03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, TREE SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 and \$200.

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

Figure 1: GAME NO. 2269 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
TREE SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$200	TOHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2269), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2269-0000001-001.

H. Pack - A Pack of the "GIFTS GALORE" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "GIFTS GALORE" Scratch Ticket Game No. 2269.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "GIFTS GALORE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-three (23) Play Symbols. A player scratches the entire play area to reveal 3 WINNING NUMBERS Play Symbols and 10 YOUR NUMBERS Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "TREE" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-three (23) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-three (23) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-three (23) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

E. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols to create matches, unless restricted by other parameters, play action or prize structure.

F. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

G. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$2 and 02, \$4 and 04, \$5 and 05, \$10 and 10 and \$20 and 20).

H. On all Tickets, a Prize Symbol will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

I. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

J. The "TREE" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

K. The "TREE" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

L. The "TREE" (DBL) Play Symbol will never appear more than two (2) times on a Ticket.

M. The "TREE" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "GIFTS GALORE" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$200 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GIFTS GALORE" Scratch Ticket Game prize of \$2,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GIFTS GALORE" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resi-

dent Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "GIFTS GALORE" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "GIFTS GALORE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the

Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2269. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2269 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	710,400	10.14
\$4.00	345,600	20.83
\$5.00	201,600	35.71
\$10.00	316,800	22.73
\$20.00	96,000	75.00
\$50.00	5,790	1,243.52
\$200	360	20,000.00
\$2,000	50	144,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2269 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2269, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002985
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 21, 2020

Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from qualified organizations with demonstrated competence, knowledge, qualifications, successful performance, and reasonable fees to provide fiscal monitoring services for the workforce development programs administered in the Panhandle Workforce Development Area (PWDA). The purpose of this solicitation is to enable PRPC to evaluate and select an entity capable of performing these services and to enter into negotiation for a contract at a fair and reasonable price.

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin, at (806) 372-3381 / (800) 477-4562 or lhardin@theprpc.org. The proposals must be submitted to PRPC no later than August 14, 2020.

TRD-202002990
 Leslie Hardin
 WFD Contracts Coordinator
 Panhandle Regional Planning Commission
 Filed: July 21, 2020

South Texas Development Council

Request for Proposals

The Area Agency on Aging of the South Texas Development Council is currently seeking contractors who are qualified entities to provide Congregate Meals, Home Delivered Meals, Demand/Response Transportation, Residential Repair, Homemaker, Personal Assistance, In-home Respite, Emergency Response and Health Maintenance Services.

These services are provided to individuals 60 years of age and older, their family members and other caregivers under the Older Americans Act of 1965 as amended with funding administered by Health and Human Service Commission in the Counties of Jim Hogg, Starr, Webb and Zapata.

Parties interested in providing services within our service area must contact the Area Agency on Aging and request an application during the closed enrollment period June 15, 2020, through July 31, 2020, for consideration.

To request an application package contact:

South Texas Development Council

Area Agency on Aging

1002 Dickey Ln.

P.O. Box 2187

Laredo, Texas 78044-2187

(956) 722-3995

(800) 292-5426

TRD-202002932

Nancy Rodriguez

Director

South Texas Development Council

Filed: July 16, 2020

◆ ◆ ◆
Supreme Court of Texas

Final Approval of Amendments to Texas Rules of Civil Procedure 116 and 117

IN THE SUPREME COURT OF TEXAS

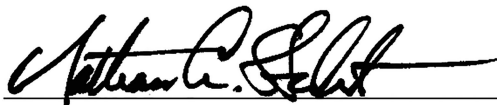
Misc. Docket No. 20-9081

FINAL APPROVAL OF AMENDMENTS TO
TEXAS RULES OF CIVIL PROCEDURE 116 AND 117

ORDERED that:

1. On January 14, 2020, in Misc. Dkt. No. 20-9009, the Court preliminarily approved amendments to Rules 116 and 117 of the Texas Rules of Civil Procedure to comply with Act of May 27, 2019, 86th Leg., R.S., ch. 606 (SB 891). The order made the amendments effective on June 1, 2020, after the expiration of a public-comment period.
2. On May 26, 2020, in Misc. Dkt. No. 20-9068, the effective date of the rules was extended to July 1, 2020, in response to the state of disaster in Texas due to the COVID-19 pandemic.
3. The Court has reviewed all public comments received, and no additional changes have been made to the rules. This order gives final approval to the amendments set forth in Misc. Dkt. No. 20-9009.
4. The public may view the website for service of process at: <https://www.txcourts.gov/judicial-data/citation-by-publication/>.
5. The Clerk of the Supreme Court is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

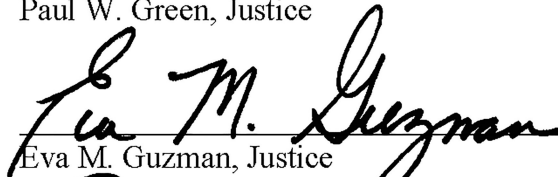
Dated: June 30, 2020



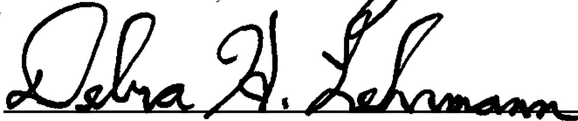
Nathan L. Hecht, Chief Justice



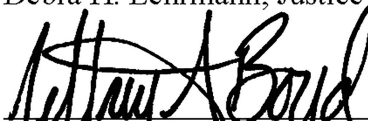
Paul W. Green, Justice



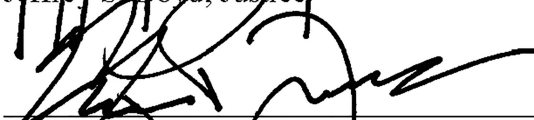
Eva M. Guzman, Justice



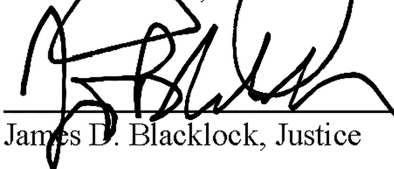
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



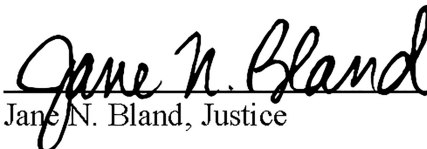
John F. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

TRD-202002947
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: July 17, 2020

◆ ◆ ◆

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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