
TEXAS REGISTER

Volume 47 Number 28

July 15, 2022

Pages 4027 - 4206



TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

<https://www.sos.texas.gov>
register@sos.texas.gov

Texas Register, (ISSN 0362-4781, USPS 12-0090), is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

Secretary of State - John B. Scott

Director - Je T'aime Swindell

Editor-in-Chief - Jill S. Ledbetter

Editors

Leti Benavides

Brandy M. Hammack

Belinda Kirk

Joy L. Morgan

Matthew Muir

Breanna Mutschler

Barbara Strickland

IN THIS ISSUE

GOVERNOR

Appointments4033

ATTORNEY GENERAL

Requests for Opinions4035

PROPOSED RULES

TEXAS DEPARTMENT OF AGRICULTURE

GENERAL PROCEDURES

4 TAC §§1.1000 - 1.10044037

4 TAC §1.1010, §1.10114038

4 TAC §1.1020, §1.10214038

4 TAC §1.1030, §1.10314038

4 TAC §1.1040, §1.10414038

4 TAC §§1.1050 - 1.10534039

FOOD AND NUTRITION DIVISION

4 TAC §§26.200 - 26.2084039

RAILROAD COMMISSION OF TEXAS

OIL AND GAS DIVISION

16 TAC §3.664042

TEXAS EDUCATION AGENCY

SCHOOL DISTRICTS

19 TAC §61.10534049

EDUCATIONAL PROGRAMS

19 TAC §§102.1307, 102.1309, 102.13134050

DEPARTMENT OF STATE HEALTH SERVICES

GENERAL SANITATION

25 TAC §§265.181 - 265.2114055

25 TAC §§265.181 - 265.1984055

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

MONITORING AND ENFORCEMENT

28 TAC §180.624069

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

30 TAC §§113.100, 113.106, 113.110, 113.120, 113.130, 113.170, 113.180, 113.190, 113.200, 113.220, 113.230, 113.240, 113.250, 113.260, 113.280, 113.290, 113.300, 113.320, 113.330, 113.340, 113.350, 113.360, 113.380, 113.390, 113.400, 113.410, 113.420, 113.430, 113.440, 113.500, 113.510, 113.520, 113.540, 113.550, 113.560, 113.600, 113.610, 113.620, 113.640, 113.650, 113.660, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.740,

113.750, 113.770, 113.780, 113.790, 113.810, 113.840, 113.860, 113.870, 113.880, 113.890, 113.900, 113.910, 113.920, 113.930, 113.940, 113.960, 113.970, 113.980, 113.990, 113.1000, 113.1010, 113.1020, 113.1030, 113.1040, 113.1050, 113.1060, 113.1070, 113.1080, 113.1090, 113.1100, 113.1110, 113.1120, 113.1130, 113.1140, 113.1150, 113.1160, 113.1170, 113.1180, 113.1190, 113.1200, 113.1210, 113.1220, 113.1230, 113.1250, 113.1260, 113.1270, 113.1280, 113.1290, 113.1300, 113.1320, 113.1350, 113.1370, 113.1380, 113.1425, 113.1435, 113.1445, 113.1450, 113.1460, 113.1465, 113.1470, 113.1475, 113.1485, 113.1500, 113.1505, 113.1510, 113.1520, 113.1525, 113.1530, 113.15554072

TEXAS DEPARTMENT OF MOTOR VEHICLES

VEHICLE TITLES AND REGISTRATION

43 TAC §217.274106

WITHDRAWN RULES

RAILROAD COMMISSION OF TEXAS

LP-GAS SAFETY RULES

16 TAC §9.264111

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

RULES OF PROFESSIONAL CONDUCT

22 TAC §573.754111

GENERAL ADMINISTRATIVE DUTIES

22 TAC §577.54111

TEXAS DEPARTMENT OF MOTOR VEHICLES

MOTOR VEHICLE DISTRIBUTION

43 TAC §215.5054111

ADOPTED RULES

TEXAS DEPARTMENT OF AGRICULTURE

GENERAL PROCEDURES

4 TAC §1.208, §1.2094113

MARKETING AND PROMOTION

4 TAC §17.200, §17.2014113

4 TAC §17.400, §17.4014114

4 TAC §17.4024114

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

STATE RECORDS

13 TAC §6.104114

RAILROAD COMMISSION OF TEXAS

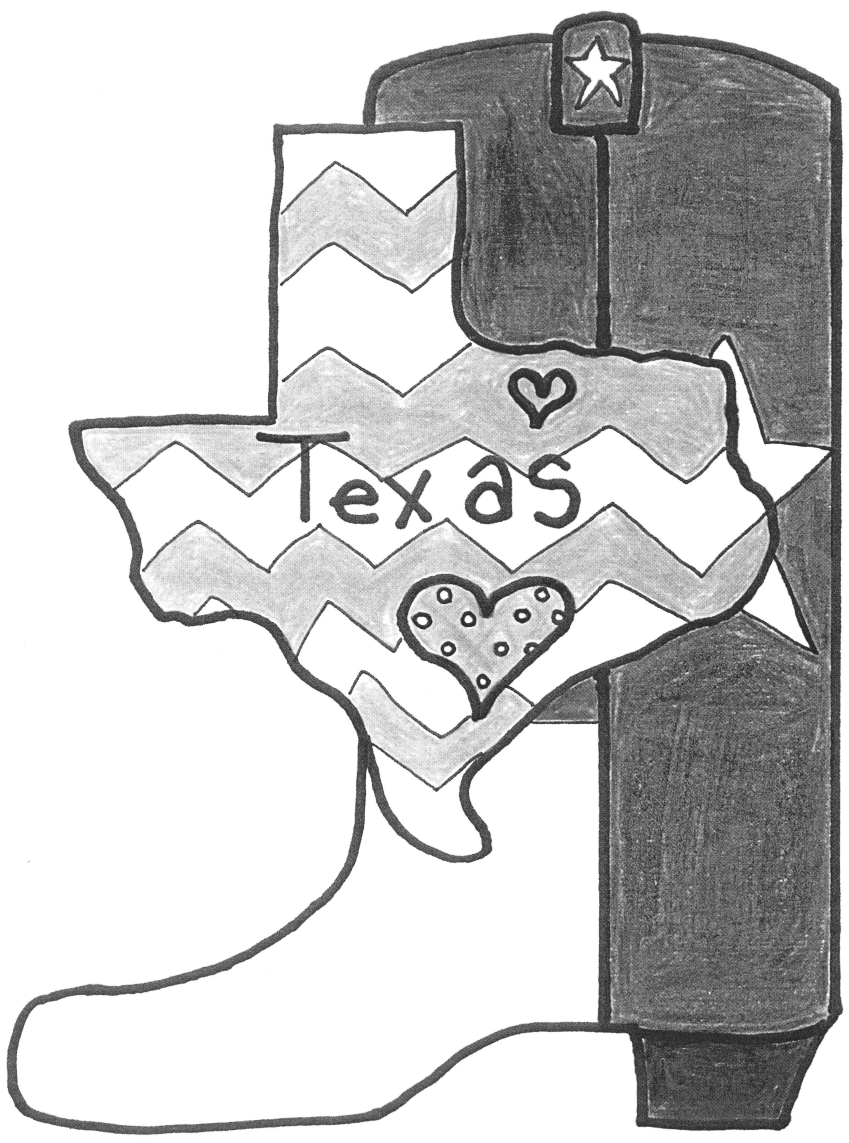
LP-GAS SAFETY RULES

16 TAC §§9.2, 9.6 - 9.8, 9.10, 9.16, 9.20, 9.22, 9.51, 9.52, 9.54, 9.554122

16 TAC §§9.126, 9.130, 9.134, 9.140 - 9.1434133

| | | | |
|--|------|---|------|
| 16 TAC §9.202, §9.211 | 4138 | Notice of Rate Ceilings..... | 4163 |
| 16 TAC §9.403 | 4138 | Texas Education Agency | |
| COMPTROLLER OF PUBLIC ACCOUNTS | | Request for Applications (RFA) Concerning Generation Twenty-Eight Open-Enrollment Charter Application (RFA #701-23-101)..... | 4163 |
| TAX ADMINISTRATION | | Request for Applications (RFA) Concerning Generation Twenty-Eight Open-Enrollment Charter Application (RFA #701-23-102)..... | 4165 |
| 34 TAC §3.9..... | 4138 | Texas Commission on Environmental Quality | |
| TEXAS WORKFORCE COMMISSION | | Agreed Orders..... | 4166 |
| YOUTH DRIVER EDUCATION FUNDING PROGRAM | | Notice of Correction to Agreed Order Number 5 | 4168 |
| 40 TAC §808.1 | 4141 | Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Dipesh Limbad dba Last Chance: SOAH Docket No. 582-22-04266; TCEQ Docket No. 2021-0458-PST-E..... | 4169 |
| 40 TAC §808.21..... | 4141 | Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Karishma Properties, Inc. dba Quick N Easy Stop: SOAH Docket No. 582-22-03363; TCEQ Docket No. 2020-1024-PST-E..... | 4169 |
| WIOA ELIGIBLE TRAINING PROVIDERS | | Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 113..... | 4170 |
| 40 TAC §840.2..... | 4143 | Notice of Public Meeting for an Air Quality Permit: Proposed Air Quality Permit Numbers 166032, PSDTX1598, and GHGPS-DTX210 | 4171 |
| 40 TAC §§840.51, 840.53, 840.54..... | 4143 | Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015946001 | 4172 |
| 40 TAC §840.61..... | 4143 | General Land Office | |
| EMPLOYMENT AND TRAINING SERVICES FOR DISLOCATED WORKERS ELIGIBLE FOR TRADE BENEFITS | | Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program | 4172 |
| 40 TAC §§849.1 - 849.3 | 4146 | Texas Health and Human Services Commission | |
| 40 TAC §849.11, §849.12..... | 4146 | Public Notice: Inclusion of American Rescue Plan Act of 2021 into CHIP State Plan | 4173 |
| 40 TAC §§849.21 - 849.23 | 4146 | Public Notice - Revised June 10, 2022 Public Notice for the Home and Community Based Services (CMS) Program | 4173 |
| 40 TAC §849.41..... | 4147 | Public Notice - Revised Public Notice for the Texas Home Living Program (TxHmL)..... | 4174 |
| 40 TAC §849.51, §849.52..... | 4147 | Department of State Health Services | |
| TEXAS DEPARTMENT OF MOTOR VEHICLES | | Licensing Actions for Radioactive Materials | 4175 |
| CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE | | Texas Lottery Commission | |
| 43 TAC §211.6..... | 4147 | Scratch Ticket Game Number 2415 "COWBOYS" | 4180 |
| MOTOR VEHICLE DISTRIBUTION | | Scratch Ticket Game Number 2416 "HOUSTON TEXANS"..... | 4186 |
| 43 TAC §215.207..... | 4151 | Scratch Ticket Game Number 2431 "SPECIAL EDITION LOTERIA"..... | 4192 |
| 43 TAC §215.505..... | 4151 | Scratch Ticket Game Number 2443 "10X LUCKY"..... | 4198 |
| RULE REVIEW | | Public Utility Commission of Texas | |
| Proposed Rule Reviews | | Notice of Proceeding for 2022 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund | 4204 |
| Texas Department of Agriculture..... | 4153 | | |
| Adopted Rule Reviews | | | |
| Texas Department of Agriculture..... | 4153 | | |
| TABLES AND GRAPHICS | | | |
| | 4155 | | |
| IN ADDITION | | | |
| Comptroller of Public Accounts | | | |
| Certification of the Average Closing Price of Gas and Oil - May 2022 | 4163 | | |
| Office of Consumer Credit Commissioner | | | |

Notice of Proceeding for 2022 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds4205



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 June 30, 2022

Appointed to the Economic Incentive Oversight Board for a term to expire at the pleasure of the Governor, Daniel G. "Dan" West of Houston, Texas (replacing Adrian S. Cannady of Belton).

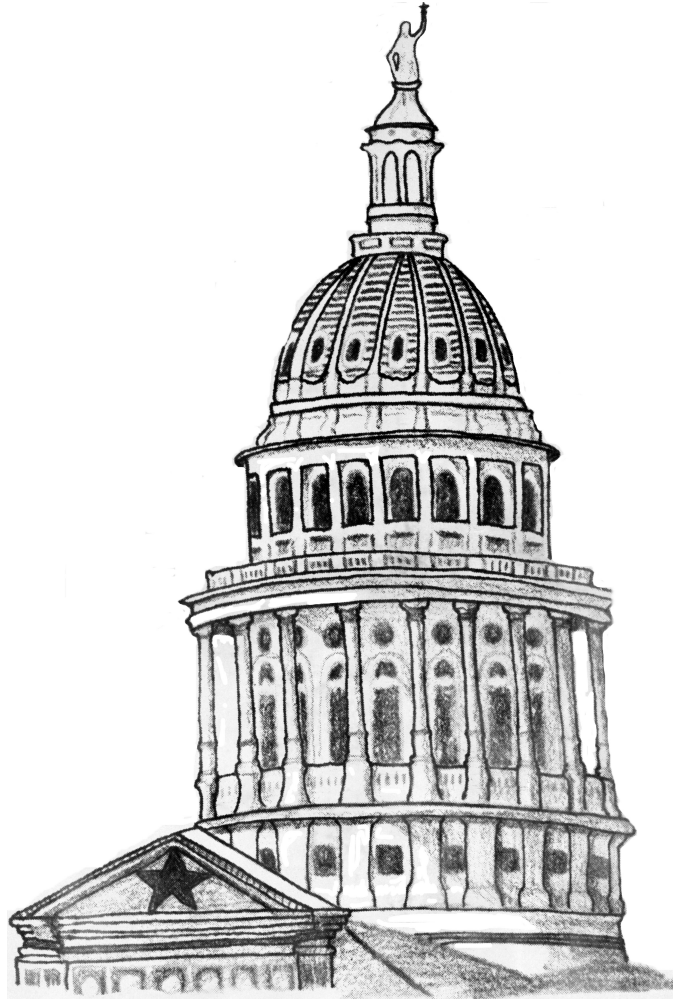
Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2027, Steve C. Golla, D.V.M. of New Braun-

fels, Texas (replacing Jessica S. Quillivan, D.V.M. of Magnolia, who resigned).

Greg Abbott, Governor

TRD-202202541





THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0465-KP

Requestor:

The Honorable Anna Hord
Hockley County Attorney
802 Houston, Suite 106
Levelland, Texas 79336

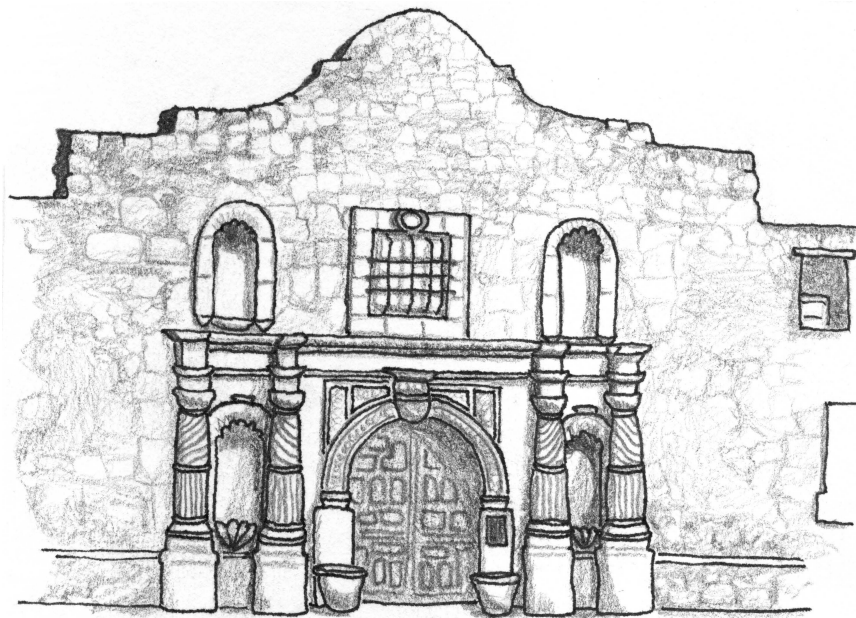
Re: Whether an individual convicted of a felony in another state whose "rights of citizenship" have been restored by the other state is eligible to run for office in Texas under Election Code section 141.001 (RQ-0465-KP)

Briefs requested by July 29, 2022

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

TRD-202202531
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: July 6, 2022





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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

The Texas Department of Agriculture (the Department) proposes the repeal of Title 4, Part 1, Chapter 1, Subchapter P, concerning the appeal procedures for the food and nutrition programs administered by the Department. In conjunction with this proposed repeal, new rules are proposed in this issue of the *Texas Register*.

The proposed repeal of existing rules for appeal procedures for the food and nutrition programs and proposed new rules are the result of a comprehensive review of the subchapter pursuant to the four-year rule review prescribed by Texas Government Code §2001.039. The repeal of existing rules and proposed new rules will eliminate duplicative and unnecessary provisions and will provide for a more simple and efficient appeals process for the Department's food and nutrition programs. The new rules are proposed in Chapter 26 to consolidate rules for food and nutrition programs.

Ms. Lena Wilson, Assistant Commissioner, Food & Nutrition Division, has determined that for each year of the first five years the proposed repeals are in effect, enforcing or administering the repeals does not have foreseeable implications relating to cost or revenues of the state or local governments.

Ms. Wilson has also determined that for each year of the first five years the proposed repeals are in effect, the public benefit will be improved readability and clarity of the rules and appeals process.

Ms. Wilson has determined there are no anticipated economic costs to persons required to comply with the proposed repeals.

Ms. Wilson has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed repeals are in effect:

1. the proposed repeals do not create or eliminate a government program;
2. implementation of the proposed repeals does not require the creation or elimination of employee positions;
3. implementation of the proposed repeals does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeals do not require an increase or decrease in fees paid to the Department;

5. the proposed repeals do not create a new regulation;
6. the proposed repeals will repeal existing regulations;
7. the proposed repeals do not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed repeals do not positively or adversely affect this state's economy.

The Department has determined the proposed repeals will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted by mail to Ms. Tanya Vermeeren, Assistant General Counsel for Food & Nutrition, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to tanya.vermeeren@texas-agriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER P. APPEAL PROCEDURES FOR THE FOOD AND NUTRITION PROGRAMS DIVISION 1. APPEAL PROCEDURES FOR THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

4 TAC §§1.1000 - 1.1004

The repeal of Chapter 1, Subchapter P, Division 1, §§1.1000-1.1004 is proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 12.

§1.1000. *Definitions.*

§1.1001. *Requests for Appeal Concerning Institutions, Responsible Principals and Responsible Individuals.*

§1.1002. *Abbreviated Appeal.*

§1.1003. *Suspension Review for Submitting False or Fraudulent Claims.*

§1.1004. *Appeals for Day Care Homes.*

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 1, 2022.

TRD-202202463

Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 14, 2022
For further information, please call: (512) 936-9360

◆ ◆ ◆

**DIVISION 2. APPEAL PROCEDURES FOR
THE SUMMER FOOD SERVICE PROGRAM
(SFSP)**

4 TAC §1.1010, §1.1011

The repeal of Chapter 1, Subchapter P, Division 2, §§1.1010-1.1011 is proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposed repeal is Texas Agriculture Code, Chapter 12.

§1.1010. Definitions.

§1.1011. Requests for Appeal.

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 1, 2022.

TRD-202202464

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 936-9360

◆ ◆ ◆

**DIVISION 3. APPEAL PROCEDURES FOR
THE NATIONAL SCHOOL LUNCH PROGRAM
(NSLP)**

4 TAC §1.1020, §1.1021

The repeal of Chapter 1, Subchapter P, Division 3, §§1.1020-1.1021 is proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposed repeal is Texas Agriculture Code, Chapter 12.

§1.1020. Definitions.

§1.1021. Request for Appeal.

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 1, 2022.

TRD-202202465

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 936-9360

◆ ◆ ◆

**DIVISION 4. APPEAL PROCEDURES FOR
THE SCHOOL BREAKFAST PROGRAM (SBP)**

4 TAC §1.1030, §1.1031

The repeal of Chapter 1, Subchapter P, Division 4, §§1.1030-1.1031 is proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposed repeal is Texas Agriculture Code, Chapter 12.

§1.1030. Definitions.

§1.1031. Request for Appeal.

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 1, 2022.

TRD-202202466

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 936-9360

◆ ◆ ◆

**DIVISION 5. APPEAL PROCEDURES
FOR THE SPECIAL MILK PROGRAM FOR
CHILDREN (SMP)**

4 TAC §1.1040, §1.1041

The repeal of Chapter 1, Subchapter P, Division 5, §§1.1040-1.1041 is proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposed repeal is Texas Agriculture Code, Chapter 12.

§1.1040. Definitions.

§1.1041. Request for Appeal.

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 1, 2022.

TRD-202202467

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 936-9360

◆ ◆ ◆

**DIVISION 6. ADMINISTRATIVE HEARING
PROCEDURES FOR CONDUCTING THE**

APPEALS OF THE FOOD AND NUTRITION PROGRAMS

4 TAC §§1.1050 - 1.1053

The repeal of Chapter 1, Subchapter P, Division 6, §§1.1050-1.1053 is proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposed repeal is Texas Agriculture Code, Chapter 12.

§1.1050. *Definitions.*

§1.1051. *Purpose.*

§1.1052. *Hearing Procedures.*

§1.1053. *Standard of Review.*

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 1, 2022.

TRD-202202468

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 936-9360



CHAPTER 26. FOOD AND NUTRITION DIVISION SUBCHAPTER E. APPEAL PROCEDURES FOR FOOD AND NUTRITION PROGRAMS

4 TAC §§26.200 - 26.208

The Texas Department of Agriculture (the Department) proposes new Chapter 26, Subchapter E, concerning Appeal Procedures for Food and Nutrition Programs. In conjunction with the proposed new rules, the repeal of existing rules for appeal procedures for the food and nutrition programs is proposed in this issue of the *Texas Register*.

The proposed new rules for appeal procedures for the food and nutrition programs and the repeal of existing rules are the result of a comprehensive review of Chapter 1, Subchapter P pursuant to the four-year rule review prescribed by Texas Government Code §2001.039. The proposed rules eliminate duplicative and unnecessary provisions and will provide for a more simple and efficient appeals process for the Department's food and nutrition programs.

New §26.200 explains the purpose of these rules.

New §26.201 defines important terms for the subchapter.

New §26.202 enumerates actions that are subject to appeal.

New §26.203 sets forth the appeal procedures for the food and nutrition programs administered by the Department.

New §26.204 provides the procedures for filing documents.

New §26.205 sets forth the procedures for a hearing.

New §26.206 describes the abbreviated appeal process.

New §26.207 explains the suspension review process.

New §26.208 describes the standard of review.

Ms. Lena Wilson, Assistant Commissioner, Food & Nutrition Division, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

Ms. Wilson has also determined that for each year of the first five years the proposed rules are in effect, the public benefit will be improved readability and clarity of the rules and appeals process.

Ms. Wilson has determined there are no anticipated economic costs to persons required to comply with the proposed rules.

Ms. Wilson has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed rules are in effect:

1. the proposed rules do not create or eliminate a government program;
2. implementation of the proposed rules does not require the creation or elimination of employee positions;
3. implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed rules do not require an increase or decrease in fees paid to the Department;
5. the proposed rules create new regulations;
6. the proposed rules will not repeal an existing regulation;
7. there may be an increase in the number of individuals subject to the rules, depending on the number of applicants who seek to participate in the programs; and
8. the proposed rules do not positively or adversely affect this state's economy.

The Department has determined the proposed rules will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted by mail to Ms. Tanya Vermeeren, Assistant General Counsel for Food & Nutrition, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to tanya.vermeeren@texas-agriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new rules are proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 12.

§26.200. *Purpose.*

(a) The purpose of these rules is to provide for a simple and efficient system for appeals of the federal food and nutrition programs administered by the department and the actions affecting participation in such programs.

(b) Appeals for FND Programs shall be conducted in accordance with the appeal procedures established by the U.S. Department of Agriculture Food and Nutrition Service (FNS) in Title 7 of the Code of Federal Regulations (CFR) Parts 210, 215, 220, 225, and 226, as applicable, this subchapter, and the FND program handbooks which are available on the department's website.

(c) The rules in this subchapter supplement the procedures set forth in the federal regulations.

§26.201. Definitions.

In addition to the definitions set out in 7 CFR Parts 210, 215, 220, 225, and 226, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Appellant--A person who files an appeal.
- (2) ARO--Administrative Review Official; the independent and impartial official who conducts the appeal held in accordance with the federal food and nutrition program regulations (7 CFR Parts 210, 215, 220, 225, and 226, as applicable).
- (3) CFR--Code of Federal Regulations.
- (4) FND--Food and Nutrition Division of the department.
- (5) FND Program--Any of the federal food and nutrition programs administered by FND which include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP).

(6) Notice of action--A letter sent by the department by certified mail, return receipt (or the equivalent private delivery service) or by email that describes an action proposed or taken by the department regarding program reimbursement or participation.

§26.202. Appealable Actions.

The following actions proposed or taken by the department are subject to appeal:

- (1) Denial of an application for program participation;
- (2) Proposed disqualification from program participation;
- (3) Proposed termination of a school food authority, institution, or sponsoring organization's program agreement with the department;
- (4) Denial of an application for a sponsored facility, center, or site;
- (5) Termination of a sponsored facility, center, or site;
- (6) Denial or disallowance of all or a part of a claim for reimbursement (except for a denial based on a late submission);
- (7) Recovery of all or a part of a claim for reimbursement through direct assessment or offset of future claims for, but not limited to, the following reasons: a claim that is not properly payable, the disallowance of funds for failure to take corrective action to comply with program requirements, or the disallowance of an overclaim;
- (8) Demand for the remittance of an overpayment or return of an improper or unearned payment of program funds;
- (9) Withholding of payment of program funds;
- (10) Suspension of program participation for health or safety reasons;
- (11) Proposed suspension of participation due to submission of a false or fraudulent claim;

(12) Denial of an application for start-up or expansion payments;

(13) Denial of a request for an advance payment of program funds;

(14) Recovery of all or part of an advance payment in excess of the claim for the applicable period, either through a demand for full repayment or an adjustment of subsequent payments;

(15) Denial of a food service management company's application for registration;

(16) Revocation of a food service management company's registration;

(17) Decision of the department not to forward to FNS an exception request for payment of a late claim, or a request for an upward adjustment to a claim; and

(18) Any other action of the department affecting program reimbursement or participation, including other actions that may be subject to appeal pursuant to 7 CFR Parts 210, 215, 220, 225, and 226.

§26.203. Appeal Procedures.

(a) Who may file. A person, or authorized representative, who has received a notice of action may file an appeal of an action described in §26.202 of this subchapter (relating to Appealable Actions).

(b) Methods of filing. An appeal may be filed by any of the following methods:

- (1) Certified, registered, or standard mail;
- (2) Email;
- (3) Facsimile;
- (4) Courier service; or
- (5) Hand delivery.

(c) Time for filing. An appeal must be filed within the following filing deadlines.

(1) FND Programs except the Summer Food Service Program (SFSP) and suspension reviews relating to false or fraudulent claims.

(A) Certified, registered, or standard mail: An appeal must be mailed to the department's docket clerk at the address provided in the notice of action and postmarked within fifteen (15) calendar days of the date of receipt, or deemed receipt, of the notice of action.

(B) Email or facsimile: An appeal must be received by the department's docket clerk at the email address or facsimile number provided in the notice of action before 5:00 p.m. Central Time within fifteen (15) calendar days of the date of receipt, or deemed receipt, of the notice of action.

(C) Courier service or hand delivery: An appeal must be received by the department at its headquarters in Austin, Texas, before 5:00 p.m. Central Time within fifteen (15) calendar days of the date of receipt, or deemed receipt, of the notice of action.

(2) SFSP and suspension reviews relating to false or fraudulent claims. The rules for filing an appeal specified in paragraph (1) of this subsection apply to SFSP appeals and suspension reviews relating to false or fraudulent claims, except the time for filing an appeal is within ten (10) calendar days from the date of receipt, or deemed receipt, of the notice of action.

(d) Form of appeal. An appeal must:

- (1) be in writing;

(2) state the basis for the appeal and specify the action(s) being appealed;

(3) include a legible copy of the notice of action; and

(4) clearly state which type of appeal the appellant is seeking;

(A) a review of written documentation submitted to the ARO; or

(B) a hearing before the ARO, which is informal and will be held at the department's headquarters in Austin, Texas. Failure to specifically request a hearing in the appeal letter shall constitute the appellant's waiver of the right to a hearing before the ARO. The ARO shall deny a request for a hearing submitted after the appeal letter has been received by the department's docket clerk, unless good cause is shown for failure to make a timely request.

(C) The option for a hearing is not available in certain matters and is limited by §26.206 of this subchapter (relating to Abbreviated Appeals) and §26.207 of this subchapter (relating to Suspension Reviews).

§26.204. Filing of Documents.

(a) To be considered, written documentation relating to a pending appeal must be filed with the department's docket clerk within the time prescribed in this section. Documents are filed only when received by the department's docket clerk. A document received after 5:00 p.m. Central Time on a business day is filed on the next business day.

(b) Parties to an appeal have the right to review any documentary materials submitted to the department's docket clerk. A party filing written materials with the docket clerk must serve, at the same time, a copy of the written materials on every other party or such party's representative or attorney of record.

(c) In all matters, except SFSP appeals and suspension reviews, an appellant must file written materials with the docket clerk within thirty (30) calendar days of the appellant's receipt, or deemed receipt, of the notice of action.

(d) In SFSP appeals, an appellant must file written materials with the docket clerk within seven (7) calendar days of submitting the appeal.

(e) In suspension reviews relating to false or fraudulent claims, an appellant must file written materials with the docket clerk within ten (10) calendar days of the appellant's receipt, or deemed receipt, of the notice of action.

(f) Documents may be filed with the docket clerk, and served on a party or such party's representative or attorney of record, by any of the filing methods specified in §26.203(b) of this subchapter (relating to Appeal Procedures).

(g) Service to the appellant or its representative shall be made to the appellant or representative's last known mailing address, email address, or facsimile number as shown by the department's records.

(h) Parties and their representatives shall immediately notify the ARO and all parties of any change in mailing address, email address, or telephone or facsimile number.

§26.205. Hearing Procedures.

(a) Motions.

(1) Motions in all matters, except in SFSP appeals, shall be filed in writing and served on all parties not less than seven (7) calendar days before the hearing, except for good cause shown. If the non-moving party files a response to the motion, the response must be filed no later than five (5) calendar days after receipt of the motion.

(2) Unless leave is granted by the ARO, motions in SFSP appeals may be filed up to forty-eight (48) hours prior to the hearing. If the non-moving party files a response to the motion, the response must be filed within forty-eight (48) hours of the receipt of the motion unless that time is extended or shortened by written order of the ARO.

(3) Motions shall set forth the specific grounds for which the moving party seeks the relief requested and shall make reference to all similar motions filed in the proceeding. The ARO shall rule on the motion in a timely fashion; however, the ARO may defer ruling on a motion until issuance of a final order.

(b) Rules of court. The formal rules of court shall not apply unless necessary for efficient conduct of the hearing.

(c) Evidence.

(1) The parties are not bound by the Rules of Evidence but shall be allowed to make lawful and pertinent objections to proffered evidence or testimony. Evidence will be admitted and given probative effect if it possesses probative value and is relevant as determined by the ARO. The ARO may limit the testimony of witnesses, or the introduction of documentary evidence, to those matters deemed probative and relevant.

(2) Service of documents on a party shall be made in accordance with §26.204 of this subchapter (relating to Filing of Documents).

§26.206. Abbreviated Appeals.

(a) This section applies only to the following actions by the department under the Child and Adult Care Food Program (CACFP):

(1) Denial of an institution's application for participation;
or

(2) Proposed termination of an institution's program agreement with the department.

(b) The appeal shall be limited to a review of written information concerning the accuracy of the department's determination if the application was denied or the department proposes to terminate the institution's program agreement because:

(1) Information submitted on the application was false;

(2) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National disqualified list;

(3) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or

(4) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity.

§26.207. Suspension Reviews.

(a) This section applies only to a proposed suspension of an institution's participation based on a determination that the institution knowingly submitted a false or fraudulent claim.

(b) If the department determines that an institution knowingly submitted a false or fraudulent claim, the department may propose to suspend the institution's participation along with initiating actions of termination and disqualification.

(c) An institution may request a review of the proposed suspension. A suspension review shall be limited to a review of written information.

(d) A request for review and written documentation opposing the proposed suspension must be submitted to the suspension review official, as specified in the notice of proposed suspension, within ten (10) calendar days of the receipt, or deemed receipt, of the notice, in accordance with the filing procedures set forth in §26.203 of this subchapter (relating to Appeal Procedures) and §26.204 of this subchapter (relating to Filing of Documents).

§26.208. Standard of Review.

The decision of the ARO shall be based on a preponderance of the evidence. The burden of proof shall be on the department to show by a preponderance of the evidence that the action being appealed was taken or proposed in accordance with the program's regulations, rules, policy guidance, and directives.

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 1, 2022.

TRD-202202469

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 936-9360



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.66

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 16 TAC §3.66 is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 15, 2022, issue of the Texas Register.)

The Railroad Commission of Texas (the "Commission") proposes new §3.66, relating to Weather Emergency Preparedness Standards. The new section is proposed to implement changes made by Senate Bill 3 from the 87th Texas Legislative Regular Session, 2021.

Senate Bill 3 is the 87th Legislature's sweeping response to the February 2021 Winter Weather Event ("Winter Storm Uri") in Texas and generally creates new law related to preparing for, preventing, and responding to weather emergencies and power outages. Senate Bill 3 requires several state agencies and regulated industries to make significant changes in response to Winter Storm Uri. This proposed rulemaking implements Sections 5, 6, 21, and 22 of Senate Bill 3. Section 5 of Senate Bill 3 created new §86.044 of the Texas Natural Resources Code, which requires the Commission to adopt rules requiring certain gas supply chain facility operators to implement measures to prepare to operate during a weather emergency (i.e., "weatherize"). Section 6 of Senate Bill 3 amended §86.222 of the Texas Natural Resources Code to establish an enforcement process and penalties for violations of Commission rules adopted under §86.044. Simi-

larly, Section 21 of Senate Bill 3 amends §121.2015 of the Texas Utilities Code to require the Commission to adopt rules requiring certain pipeline facility operators to implement measures to prepare to maintain service quality and reliability during extreme weather conditions (i.e., "weatherize"). Section 22 of Senate Bill 3 amends §121.206 of the Texas Utilities Code to establish an enforcement process and penalties for violations of Commission rules adopted under §121.2015.

Importantly, Senate Bill 3 specifies that only certain gas supply chain facility operators and certain gas pipeline facility operators are required to comply with Commission rules adopted pursuant to §86.044 of the Texas Natural Resources Code and §121.2015 of the Texas Utilities Code, respectively. The gas supply chain facility operators who must comply are those whose facilities are included on the electricity supply chain map created under §38.203 of the Texas Utilities Code and are designated as critical by the Commission in 16 Texas Administrative Code §3.65, relating to Critical Designation of Natural Gas Infrastructure, which was adopted under Texas Natural Resources Code §81.073. Proposed subsection (a)(1) of new §3.66 incorporates these elements from §86.044 of the Natural Resources Code.

The gas pipeline facility operators who must comply with Commission weatherization rules are those who are included on the electricity supply chain map and directly serve a natural gas electric generation facility operating solely to provide power to the electric grid for the ERCOT power region or for the ERCOT power region and an adjacent power region. Proposed §3.66(a)(2) incorporates these elements from Texas Utilities Code §121.2015.

Proposed §3.66(b) contains definitions for "gas pipeline facility" and "gas supply chain facility" to further clarify which facilities are subject to the requirements of proposed §3.66. The definitions for "gas pipeline facility" and "gas supply chain facility" are consistent with Texas Utilities Code §121.2015 and Texas Natural Resources Code §86.044, respectively. A gas pipeline facility is a pipeline or pipeline facility regulated by the Commission under Texas Utilities Code Chapter 121. A gas supply chain facility is a facility that is used for producing, treating, processing, pressurizing, storing, or transporting natural gas as well as handling waste produced. These facilities include gas wells, oil leases producing casinghead gas, gas processing plants, underground natural gas storage, and saltwater disposal facilities.

As noted above, a gas supply chain facility or gas pipeline facility must be included on the electricity supply chain map for proposed §3.66 to apply to the facility. If the facility is not included on the map, the requirements of proposed new §3.66 do not apply to the facility. The Texas Electricity Supply Chain Security and Mapping Committee, created by Senate Bill 3 and of which the Commission's Executive Director is a member, adopted the electricity supply chain map on April 29, 2022. The electricity supply chain map is confidential by law. Its contents will not be made available to the public. However, the Commission recognizes that operators need to know which of their facilities, if any, are included on the map and notes that it will notify operators to inform them which facilities are included on the map.

In addition to definitions for "gas supply chain facility" and "gas pipeline facility," proposed subsection (b) contains definitions for the following terms: critical component, major weather-related forced stoppage, repeated weather-related forced stoppage, sustained operation, weather emergency, weatherization, and weather-related forced stoppage. These terms are explained

in more detail below along with the portions of the rule in which they appear.

Proposed subsection (c) contains the weather emergency preparedness standards for a gas supply chain facility or a gas pipeline facility subject to §3.66 as specified in subsection (a). By December 1st of each year, a gas supply chain facility operator or a gas pipeline operator shall implement weather emergency preparation measures intended to, first, ensure the sustained operation of a gas supply chain facility or a gas pipeline facility during a weather emergency. "Sustained operation" is defined in proposed subsection (b)(6) as the safe operation of a gas pipeline facility or gas supply chain facility such that the facility does not experience a weather-related forced stoppage in production, treating, processing, storage, or transportation of natural gas. The Commission understands that operators' first concern in a weather emergency is the safety of their employees. "Safe operation" is included in the definition of "sustained operation" to reflect this concern. The definition of "sustained operation" contains another defined term -- weather-related forced stoppage. "Weather-related forced stoppage" is defined in proposed subsection (b)(9) as "an unanticipated and/or unplanned outage in the production, treating, processing, storage, or transportation of natural gas that is caused by weather conditions such as freezing temperatures, freezing precipitation, or extreme heat."

Proposed subsection (c)(1)(A) states that weather emergency preparation measures intended to ensure sustained operation are required during a weather emergency. "Weather emergency" is defined in proposed subsection (b)(7) as "weather conditions such as freezing temperatures, freezing precipitation, or extreme heat in the facility's county or counties that result in an energy emergency as defined in §3.65 of this title." The definition clarifies that a weather emergency does not include weather conditions that cannot reasonably be mitigated such as tornadoes, floods, or hurricanes. Other weather conditions that an operator may not be able to mitigate may include high winds, lightning, or fires.

The proposed definition of "weather emergency" ensures that the requirements of proposed §3.66 help achieve the purpose of Senate Bill 3, which aims to stabilize the electricity supply chain. Therefore, proposed §3.66 tasks operators of gas supply chain facilities and gas pipeline facilities with implementing measures to ensure sustained operation when weather conditions create a risk to the electricity supply chain.

As proposed in §3.66(c)(1)(B), by December 1st of each year, a gas supply chain facility operator or a gas pipeline operator shall also implement weather emergency preparation measures intended to correct known weather-related forced stoppages that prevented sustained operation of a facility because of previous cold weather conditions.

Proposed §3.66(c)(2) lists the weather emergency preparation measures that are required. First, weather emergency preparation measures shall include self-assessment, inspections, and tests of critical components and other equipment. "Critical component" is defined in proposed subsection (b)(1) as "any component, including equipment rented or leased from a third party, that is susceptible to weather-related interruptions, such as those caused by freezing temperatures, freezing precipitation, or extreme heat, the occurrence of which is likely to significantly hinder sustained operation of the gas pipeline or gas supply chain facility." Other required weather emergency preparation measures include providing training on weather

emergency preparations and operations to relevant operational personnel and emergency operations planning using a risk-based approach to identify, test, and protect the critical components of the facility. These requirements are proposed as subsection (c)(2)(B) and (c)(2)(C), respectively.

Proposed subsection (c)(2)(D) requires that weather emergency preparation measures include weatherization of the facility using methods applicable to the facility based on the type of facility, the facility's critical components, the facility's location, and weather data for the facility's county or counties including data illustrated in the proposed table. Proposed subsection (b)(8) defines "weatherization" as "the iterative cycle of preparedness for weather emergencies that includes corrective actions taken on issues identified from previous extreme weather events or internal review, implementation of processes, and installation of equipment to mitigate weather-related operational risks."

The Commission recognizes that appropriate weatherization methods will depend on facility-specific factors, such as the facility type and location. Proposed subsection (c)(2)(D) requires weatherization based on those facility-specific factors. Facility-specific factors also include weather data for the county or counties in which the facility is located, which is reflected in the table proposed with subsection (c)(2)(D). During the rulemaking process, the Commission sought guidance from the state climatologist's office as required by Senate Bill 3. The state climatologist's office gathered the data for the proposed table, which contains record weather conditions (i.e., coldest temperature, hottest temperature, and typical longest consecutive hours of freezing or frozen precipitation) for each county or region in Texas. To identify temperature extremes, the climatologist used the multi-station extreme function in SC-ACIS (<https://scacis.rcc-acis.org>), which is an interface to the Applied Climate Information System with functionality relevant for State Climatologists. It is synced with the National Centers for Environmental Information (NCEI) climatological data databases but includes some additional station data. For each county, the climatologist recorded the extreme maximum and minimum temperatures and the years in which they occurred. Regarding the typical longest consecutive hours of frozen precipitation, the climatologist calculated region-wide estimates that do not correspond to a particular year.

The climatologist also checked all extreme values for plausibility compared with neighboring counties. In those instances where the reported extreme was implausible (illogically high or low, wrong season, and/or inconsistent with neighboring stations), it was discarded in favor of the most extreme plausible value. In instances when an extreme was significantly less extreme than surrounding counties and the reason was that the observations in that county only covered a small number of years, the value was replaced with a conservative value (generally not the most extreme) from a bordering county. When no observations were available from a county, the climatologist used a conservative value (generally not the most extreme) from a bordering county. Values borrowed from an adjacent county or estimated using data from adjacent counties are noted in the proposed table. The Commission appreciates the state climatologist and the state climatologist's office for its knowledge, assistance, and guidance in preparing the proposed rule, particularly the table proposed in subsection (c)(2)(D).

During the rulemaking process, the Commission also contracted with two companies that specialize in risk and resilience assessments and emergency response plans for members of the en-

ergy industry. The contractors assisted in developing the proposed rule and gave specific insight on the list of potential weatherization methods in proposed subsection (c)(2)(D).

Proposed subsection (d) requires a gas supply chain facility operator or gas pipeline facility operator to submit to the Commission a Weather Emergency Readiness Attestation by December 1st of each year. The attestation must be prepared by an authorized officer of the operator entity or under the authorized officer's supervision and direction and must attest that the operator implemented the weather emergency preparation measures described in proposed subsection (c). The attestation must also include an attachment describing all activities the operator engaged in to implement the requirements of subsection (c). Thus, the attachment must describe the measures the operator implemented to ensure sustained operation of the gas supply chain facility or gas pipeline facility during a weather emergency and must, at a minimum, describe the following measures: self-assessment, inspections, and tests of critical components and other equipment as specified in §3.66(c)(2)(A); training provided on weather emergency preparations and operations to relevant operational personnel as specified in §3.66(c)(2)(B); emergency operations planning using a risk-based approach to identify, test, and protect the critical components of the facility as specified in §3.66(c)(2)(C); and weatherization measures applicable to the facility as described in §3.66(c)(2)(D). Proposed subsection (d)(1)(B) provides categories of critical components and other facility equipment to assist operators in describing their weather emergency preparedness measures.

Additionally, proposed subsection (d)(1)(C) requires that for the first attestation due December 1, 2022, the attestation describe corrective actions taken to mitigate known weather-related forced stoppages that prevented sustained operation of the facility because of previous cold weather conditions.

Proposed §3.66(d)(2) specifies that an operator may claim information submitted on its Weather Readiness Attestation confidential and includes the process that will be followed if a Public Information Act request for the confidential information is filed with the Commission.

Proposed §3.66(e) states that the Commission will inspect facilities subject to §3.66 to ensure compliance with the section's requirements. The Commission notes that, generally, an inspection will stem from one of two places: (1) an regular inspection of the facility conducted in accordance with the Commission's inspection schedule or (2) an inspection scheduled in response to a weather-related stoppage notification filed under proposed subsection (f).

Proposed subsection (f) addresses weather-related forced stoppages experienced by a gas supply chain facility or gas pipeline facility. Proposed subsection (f)(1) requires a facility that experiences a weather-related forced stoppage in sustained operations during a weather emergency to notify the Commission of the stoppage if the stoppage is not resolved within 24 hours of discovery. The notification is only required if the weather-related forced stoppage occurs during a weather emergency. The notification shall be made to the Commission's Critical Infrastructure Division's notification portal. However, if the weather-related forced stoppage results in a loss of production exceeding 5,000 Mcf of natural gas per day, or a stoppage of gas processing, storage withdrawal, or transportation capacity exceeding 200 MMcf per day, the operator shall, upon discovery of the stoppage, immediately contact the Commission on the Critical Infrastructure Division 24-hour emergency telephone number. As mentioned

above, a notification through the portal or to the emergency number will result in an inspection to determine whether the stoppage was caused by the facility's failure to adhere to the requirements of proposed §3.66. If the weather-related forced stoppage was unrelated to the requirements of §3.66, the facility will not be issued a violation.

The Commission recognizes that it does not have jurisdiction to require a facility to operate and that is not what proposed §3.66 requires. Instead, proposed §3.66 requires an operator to implement measures to prepare to operate in a weather emergency as specified in §3.66(c). In determining whether a facility that experiences a weather-related forced stoppage during a weather emergency has violated §3.66, the relevant inquiry is whether the weather-related forced stoppage was due to the operator's failure to implement measures to prepare to operate in a weather emergency.

Proposed subsection (f)(2) incorporates requirements added to Texas Natural Resources Code §86.044 and Texas Utilities Code §121.2015 by Senate Bill 3. If a gas supply chain facility or a gas pipeline facility experiences repeated weather-related forced stoppages or major weather-related forced stoppages in sustained operation it shall contract with a qualified engineer with related experience to assess the facility's weather emergency preparation measures, plans, procedures, and operations. "Major weather-related forced stoppage" is defined in proposed subsection (b)(4) as a weather-related forced stoppage that results in significant impact to public safety as determined by the Critical Infrastructure Division Director or is the result of the deliberate disregard of §3.66. "Repeated weather-related forced stoppage" is defined in proposed subsection (b)(5) as when a gas supply chain facility or gas pipeline facility has more than one weather-related forced stoppage violation within a calendar year (i.e., from January to December). The proposed definitions for major weather-related forced stoppage and repeated weather-related forced stoppage are consistent with the definitions for major and repeated violations in the Commission's Oil and Gas Strategic Monitoring and Enforcement Plan.

Proposed §3.66(g) relates to enforcement of violations of §3.66. Texas Natural Resources Code §§86.044 and 86.222-.224 stipulate the enforcement process and penalties for a violation of §3.66. Pursuant to these statutes, if the Commission determines that a person has violated §3.66 and the violation is not remedied within a reasonable amount of time, the Commission is required to notify the Office of the Attorney General of Texas. Texas Natural Resources Code section 86.044 requires that the Attorney General initiate a suit to recover a penalty for the violation. Texas Natural Resources Code section 86.222 requires the Commission to establish a classification system to be used by a court for violations of §3.66. The classification system shall include a range of penalties that may be recovered for each class of violation based on factors such as the nature, circumstances, extent, and gravity of a prohibited act; the hazard or potential hazard created to the public's health, safety, or economic welfare; the history of previous violations; the amount necessary to deter future violations; and efforts to correct the violation. Section 86.222 further specifies that the classification system require only the highest class of violations to be eligible for a penalty exceeding \$5,000. The maximum penalty allowed by section 86.222 is \$1,000,000 for each offense.

The table proposed in subsection (g)(1) contains the classification system required by Section 86.222. It incorporates the factors required by section 86.222 and assigns a factor value to

each factor. For example, to incorporate the factor of nature, circumstances, extent, and gravity of a prohibited act, the Commission included rows such as proposed rows 1-7. These rows raise the factor value depending on the amount of natural gas impacted by the violation. An oil lease or gas well that produces 250 Mcf or more per day but less than 500 Mcf per day is only assigned a factor value of 1, whereas a facility that produces an average of 5,000 Mcf per day is assigned a factor value of 4. The values are then totaled to assign each violation a class based on point total, and the class determines the penalty range. For example, a Class B violation could result in a penalty of any amount greater than \$4000 up to \$5000. A Class A violation is the highest class of violations, making it eligible under section 86.222 for a penalty amount greater than \$5,000 up to \$1,000,000.

Proposed subsection (g)(2) incorporates the enforcement process and penalty requirements specified in Texas Utilities Code sections 121.2015 and 121.206. Section 121.2015 requires that the Commission assess an administrative penalty against a person who violates §3.66 if the violation is not remedied within a reasonable amount of time. It also requires that the Commission report such violations to the Attorney General. However, unlike Texas Natural Resources Code section 86.044, the Attorney General is not required to file suit. Instead, the Commission is authorized to assess an administrative penalty. The Commission will use the table proposed in subsection (g)(1) to assess penalties for a violation of §3.66.

The Commission notes that violations of §3.66 will be issued on a facility basis. The operator of a facility with an alleged violation will be issued a notice of the violation and given an opportunity for a hearing. A gas supply chain facility violation will be determined by the Commission and then referred to the Attorney General for penalty assessment as specified in subsection (g). For a gas pipeline facility violation, the Commission will determine whether there is a violation, and if so, will also assess the appropriate penalty.

Corey Crawford, Chief Financial Officer, has determined that for each year of the first five years that the new rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. The effect on state government is due to the requirements of Senate Bill 3, and the Commission included the costs in its Senate Bill 3 fiscal note submitted to the Legislature during the 87th Legislative Session. The costs included in the fiscal note were the Commission's total estimated costs for implementing all of Senate Bill 3's requirements, not just Sections 5, 6, 20, and 21, which prompted proposed §3.66. For each year of the first five years the proposed new rule is in effect, the Commission's total estimated costs for implementing Senate Bill 3 are \$2,463,638 in Fiscal Year (FY) 2022, \$1,265,558 in FY 2023, \$1,190,678 in FY 2024, \$1,115,798 in FY 2025, and \$1,115,798 in FY 2026. There will be no fiscal effect on local government. The majority of the costs related to implementation of proposed new rule §3.66 can be attributed to salaries for new Critical Infrastructure Division inspectors.

Jared Ware, Director, Critical Infrastructure Division, has determined that for each year of the first five years the new rule as proposed is in effect the primary public benefit will be the requirement for gas supply chain facilities and gas pipeline facilities to implement measures to prepare to operate in a weather emergency, increasing the likelihood that these facilities continue to operate in a weather emergency and, therefore, increasing the

availability of natural gas for electric power generation. The public benefit will also be compliance with applicable state law.

Mr. Ware has determined that for each year of the first five years that the new rule be in full effect, there will be economic costs for persons required to comply as a result of adoption of the proposed new rule. The economic costs result from implementing the required weather emergency preparation measures. As described in proposed subsection (a), only certain gas supply chain facilities and gas pipeline facilities are required to comply with the requirements of proposed §3.66. The economic cost for a gas supply chain facility or gas pipeline facility will vary depending on the factors in proposed subsection (c)(2)(D). Specifically, a facility's geographic location, its associated weather conditions, and the type of facility will dictate what weatherization methods are needed and, therefore, will determine the economic cost of weatherizing. In addition, some facilities may have already implemented weather emergency preparation measures based upon purchases of goods and services subject to economic valuations at the time of purchase. The economic impact on those facilities could potentially be less than facilities who have not begun to weatherize.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on rural communities, small businesses, and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on rural communities, small businesses, or micro-businesses. The proposed new rule will not have an adverse economic effect on rural communities. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons required to comply with the proposed new rule classify as small businesses or micro-businesses, as those terms are defined. However, based on the information available, the Commission expects that there are operators subject to the proposed requirements that fall within the definition of a small business or micro-business. The Commission expects most of the operators that fall within the definition of small business or micro-business will be operators of gas wells or oil leases producing casinghead gas.

In preparing the proposed rule, the Commission considered whether the purpose of the rule could still be achieved if small or micro-businesses have different requirements. With these considerations in mind, the Commission proposes an enforcement scheme that takes into account the amount of gas a facility produces. A weather-related forced stoppage during a weather emergency that is determined to be a violation of proposed

§3.66 is more severe if the facility contributes more gas to the supply chain. Thus, facilities producing more gas are assigned a higher factor value in the proposed classification table in subsection (g). An operator of a gas well or oil lease that produces a smaller amount of gas is subject to a smaller penalty amount. Further alternatives for small or micro businesses were rejected because Senate Bill 3 specifies the facilities that are required to implement weather emergency preparation measures and does not except small or micro businesses. The Commission notes, however, that gas wells and oil leases are only required to comply with proposed §3.66 if they are designated critical under Commission §3.65 and are included on the electricity supply chain map. Section 3.65 excludes low-producing wells from the facilities it designates as critical. Therefore, a gas well producing 15 Mcf per day or less and an oil lease producing 50 Mcf per day or less are not subject to the requirements of §3.65 or proposed §3.66.

The Commission has determined that the proposed new rule will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

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

During the first five years that the rule would be in full effect, the new rule proposed pursuant to recent legislation would create a new government program, create a new regulation, expand the Commission's existing penalty authority to encompass violations of the proposed new rule, and increase responsibility for persons under the Commission's jurisdiction. The proposed new rule does require an increase in future legislative appropriations. Senate Bill 3, the legislation requiring adoption of the rule, prompted this increase. Implementation of Senate Bill 3, which includes the proposed rule, will also require new employee positions in the Commission's Critical Infrastructure Division. Proposed §3.66 does not require an increase or decrease in fees paid to the Commission. Because proposed §3.66 is a new rule, it would not increase or decrease the number of individuals subject to the rule's applicability. Finally, the proposed rule would not affect the state's economy.

In addition to accepting written comments, the Commission has scheduled a workshop pursuant to Texas Government Code Section 2001.029 to allow members of the public to comment on the proposed new rule. The workshop will be held on Tuesday, July 5, 2022 beginning at 9:30 a.m. Details and any updates on the workshop will be available on the Commission's website.

Comments on the proposed new rule may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, August 15, 2022. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered.

For further information, call Mr. Ware at (512) 463-7336. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the Commission's website at <https://rrc.texas.gov/general-counsel/rules/proposed-rules/>. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the new rule under section 86.044 of the Texas Natural Resources Code, which requires the Commission to adopt rules requiring certain gas supply chain facility operators to implement measures to prepare to operate during a weather emergency (i.e., "weatherize"); section 86.222 of the Texas Natural Resources Code, which requires the Commission to establish an enforcement process and penalties for violations of Commission rules adopted under section 86.044; section 121.2015 of the Texas Utilities Code, which requires the Commission to adopt rules requiring certain pipeline facility operators to implement measures to prepare to maintain service quality and reliability during extreme weather conditions; and section 121.206 of the Texas Utilities Code, which requires the Commission to establish an enforcement process and penalties for violations of Commission rules adopted under section 121.2015.

Statutory authority: Natural Resources Code §§86.044 and 86.222; Utilities Code §§121.2015 and 121.206.

Cross reference to statute: Natural Resources Code Chapter 86, Utilities Code Chapter 121.

§3.66. Weather Emergency Preparedness Standards.

(a) Applicability.

(1) In accordance with Texas Natural Resources Code §86.044, this section applies to a gas supply chain facility that is:

(A) included on the electricity supply chain map created under Texas Utilities Code §38.203; and

(B) designated as critical in §3.65 of this title, relating to Critical Designation of Natural Gas Infrastructure.

(2) In accordance with Texas Utilities Code §121.2015, this section applies to a gas pipeline facility that:

(A) directly serves a natural gas electric generation facility operating solely to provide power to the electric grid for the Electric Reliability Council of Texas (ERCOT) power region or for the ERCOT power region and an adjacent power region; and

(B) is included on the electricity supply chain map created under Texas Utilities Code §38.203.

(b) Definitions. In this section, the following definitions apply.

(1) Critical component--Any component, including equipment rented or leased from a third party, that is susceptible to weather-related interruptions, such as those caused by freezing temperatures, freezing precipitation, or extreme heat, the occurrence of which is likely to significantly hinder sustained operation of the gas pipeline or gas supply chain facility.

(2) Gas pipeline facility--A pipeline or pipeline facility regulated by the Commission under Texas Utilities Code Chapter 121.

(3) Gas supply chain facility--A facility that is:

(A) used for producing, treating, processing, pressurizing, storing, or transporting natural gas, as well as handling waste produced;

(B) not primarily used to support liquefied natural gas pretreatment, liquefaction, or regasification facilities in the business of exporting or importing liquefied natural gas to or from foreign countries;

(C) otherwise regulated by the Commission under Subtitle B of Title 3, Texas Natural Resources Code; and

(D) not regulated by the Commission under Texas Utilities Code Chapter 121.

(4) Major weather-related forced stoppage--A weather-related forced stoppage that results in a significant impact to public safety as determined by the Critical Infrastructure Division Director or is the result of the deliberate disregard of this section.

(5) Repeated weather-related forced stoppage--When a gas supply chain facility or a gas pipeline facility has more than one weather-related forced stoppage violation within a calendar year.

(6) Sustained operation--Safe operation of a gas pipeline facility or a gas supply chain facility such that the facility does not experience a weather-related forced stoppage in production, treating, processing, storage, or transportation of natural gas.

(7) Weather emergency--Weather conditions such as freezing temperatures, freezing precipitation, or extreme heat in the facility's county or counties that result in an energy emergency as defined by §3.65 of this title. A weather emergency does not include weather conditions that cannot be reasonably mitigated such as tornadoes, floods, or hurricanes.

(8) Weatherization--The iterative cycle of preparedness for weather emergencies that includes corrective actions taken on issues identified from previous extreme weather events or internal review, implementation of processes, and installation of equipment to mitigate weather-related operational risks.

(9) Weather-related forced stoppage--An unanticipated and/or unplanned outage in the production, treating, processing, storage, or transportation of natural gas that is caused by weather conditions such as freezing temperatures, freezing precipitation, or extreme heat.

(c) Weather emergency preparedness standards for a gas supply chain facility or a gas pipeline facility.

(1) By December 1st of each year, a gas supply chain facility operator or a gas pipeline facility operator shall implement weather emergency preparation measures intended to:

(A) ensure the sustained operation of a gas supply chain facility or a gas pipeline facility during a weather emergency; and

(B) correct known weather-related forced stoppages that prevented sustained operation of a facility because of previous cold weather conditions.

(2) Weather emergency preparation measures required by paragraph (1) of this subsection shall include:

(A) self-assessment, inspections, and tests of critical components and other equipment;

(B) providing training on weather emergency preparations and operations to relevant operational personnel;

(C) emergency operations planning using a risk-based approach to identify, test, and protect the critical components of the facility; and

(D) weatherization of the facility using methods applicable to the facility based on the type of facility, the facility's critical components, the facility's location, and weather data for the facility's county or counties including data illustrated in the table of this subsection. Weatherization methods may include but are not limited to the following:

(i) securing onsite fuel and spare parts;

(ii) securing sufficient chemicals, auxiliary fuels, and other materials;

(iii) keeping inventory of hydrate and/or freeze protection chemical readily available and accessible;

(iv) securing personnel including contractors required to operate the facility;

(v) installing adequate wind breaks or temporary enclosures for equipment or facilities susceptible to outages caused by wind;

(vi) enclosing sensors and other sensitive instruments for cold weather critical components;

(vii) installing thermal insulation and/or heat tracing devices, inspecting thermal insulation for damage or degradation, and repairing damaged or degraded insulation;

(viii) installing monitoring devices for cold weather critical components, including circuitry providing freeze protection or preventing instrument air moisture;

(ix) confirming the operability of instrument air moisture prevention systems;

(x) installing chemical injection systems for lowering freezing point of entrained water at the facility;

(xi) installing devices and equipment to remove, store, or dispose of liquids to prevent freeze-offs of equipment;

(xii) establishing a schedule for testing of such freeze protection components prior to December and through March of each year;

(xiii) conducting maintenance of freeze protection components for all applicable equipment;

(xiv) using nitrogen in closed loop systems for instrument controls as an alternative to air;

(xv) ensuring equipment availability and inventory of sand or gravel stock to allow for road and/or ground maintenance and access;

(xvi) procuring necessary third-party services such as rental tanks, enclosures, tank trucks, mobile steamer units, and pressure trucks;

(xvii) creating accessible operating procedures that include steps and actions to be taken by personnel during extreme weather conditions, such as de-pressuring and draining of process lines or systems, hydrate removal, and ice plug removal;

(xviii) developing and implementing redundancies for continued operations during loss of critical and high-risk critical equipment during weather emergencies;

(xix) coordinating with local authorities for allowing ingress and egress to critical facilities during weather emergencies; and

(xx) for new water transportation, burying all sub-surface piping four feet or deeper and insulating and tracing above-ground piping.

Figure: 16 TAC §3.66(c)(2)(D)(xx)

(d) Weather Emergency Readiness Attestation.

(1) Submittal of Weather Emergency Readiness Attestation. By December 1 of each year, an operator of a gas supply chain facility or a gas pipeline facility shall submit to the Commission a Weather Emergency Readiness Attestation that:

(A) is sworn to by an authorized officer of the operator entity attesting, under penalties prescribed in Texas Natural Resources Code §91.143, that:

(i) the operator implemented the required weather emergency preparation measures described in subsection (c) of this section;

(ii) the information and statements made in the Weather Emergency Readiness Attestation are true, correct, and complete;

(iii) the authorized officer is responsible for the operator entity's regulatory compliance with this section;

(iv) the officer is authorized to sign the attestation on behalf of the operator entity; and

(v) the Weather Emergency Readiness Attestation was prepared by the authorized officer or under the authorized officer's supervision and direction;

(B) includes an attachment describing all activities engaged in by the operator to implement the requirements of subsection (c) of this section for each of the following categories applicable to the facility:

(i) process piping and vessels;

(ii) process fluids including dry gas, wet gas, and produced water;

(iii) fuel gas systems;

(iv) tankage, terminals, and distribution;

(v) instrument air management;

(vi) electrical management systems;

(vii) water management systems;

(viii) utility connections;

(ix) pumps, compressors, and turbines;

(x) air intake systems;

(xi) chemical tanks and porta feeds;

(xii) flare systems;

(xiii) safety systems including showers and face-wash;

(xiv) maintenance preparation and readiness;

and

(xv) closed loop glycol heaters and tracing systems;

above; and

(xvi) additional critical components not listed

(C) for the Weather Emergency Readiness Attestation due December 1, 2022, also describes corrective actions taken to mitigate known weather-related forced stoppages that prevented sustained operation of a facility because of previous cold weather conditions.

(2) Confidentiality of the Weather Emergency Readiness Attestation. A gas supply chain facility operator or a gas pipeline facility operator filing information with the Commission that the operator contends is confidential by law shall notify the Commission on the Weather Emergency Readiness Attestation. If the Commission receives a request under the Texas Public Information Act (PIA), Texas Government Code, Chapter 552, for materials that have been designated confidential, the Commission will notify the filer of the request in accordance with the provisions of the PIA so that the filer can take action with the Office of the Attorney General to oppose release of the materials.

(e) Inspection of gas supply chain facilities and gas pipeline facilities. Each facility required to comply with this section is subject to Commission inspections to ensure compliance with this section.

(f) Weather-related forced stoppages by a gas pipeline facility or gas supply chain facility.

(1) An operator of a gas supply chain facility or a gas pipeline facility that experiences a weather-related forced stoppage in sustained operations during a weather emergency shall notify the Commission immediately through the Critical Infrastructure Division's notification portal if the stoppage is not resolved within 24 hours of discovery of the stoppage. In the event a weather-related forced stoppage results in a loss of production exceeding 5,000 Mcf of natural gas per day, or a stoppage of gas processing, storage withdrawal, or transportation capacity exceeding 200 MMcf per day, the operator shall, upon discovery of the stoppage, immediately contact the Commission on the Critical Infrastructure Division 24-hour emergency telephone number. If an inspection determines that the stoppage was caused by the facility's failure to adhere to the requirements of this section, the facility will be subject to an enforcement action.

(2) An operator of a gas supply chain facility or a gas pipeline facility that experiences repeated weather-related forced stoppages or major weather-related forced stoppages in sustained operation, such as equipment freeze-offs, instrument failures, forced outages, or forced shut-ins shall, upon notice from the Commission, contract with a qualified engineer with related experience to assess its weather emergency preparation measures, plans, procedures, and operations. The qualified engineer shall not be an employee of the facility or its affiliate and shall not have participated in any assessments of the facility for at least the previous five years, unless the facility's operator can document that no other qualified engineers are reasonably available for engagement. The facility's operator shall submit to the Commission a written assessment prepared by the qualified engineer and the facility operator's corrective action plan within the timeframe required and in compliance with the terms in the Commission's notice that the facility is required to comply with this paragraph.

(g) Enforcement.

(1) Violation of this section by a gas supply chain facility operator. A gas supply chain facility operator will be given notice and opportunity for a hearing for alleged violations of this section. Pursuant to Texas Natural Resources Code §86.044 and §§86.222-.224, if the Commission determines that a person has violated this section and the violation is not remedied in a reasonable amount of time, the Commission shall notify the Office of the Attorney General of Texas of the violation in accordance with Texas Natural Resources Code §86.222. Each day a violation occurs constitutes a separate offense, the penalty for which may be up to \$1,000,000. The table in this paragraph con-

tains a classification system to be used under Texas Natural Resources Code §86.222 for violations of this section.

Figure: 16 TAC §3.66(g)(1)

(2) Violation of this section by a gas pipeline facility operator.

(A) A gas pipeline facility operator will be given notice and opportunity for a hearing for alleged violations of this section. Pursuant to Texas Utilities Code §121.2015, if the Commission determines that a person has violated this section and the violation is not remedied in a reasonable amount of time, the Commission shall report the violation to the Office of the Attorney General of Texas. Pursuant to Texas Utilities Code §121.206, the Commission shall assess an administrative penalty for a violation of this section, which may be up to \$1,000,000 for each offense. Each day a violation occurs constitutes a separate offense.

(B) In accordance with Texas Utilities Code §121.206(d), the Commission will use the table in paragraph (1) of this subsection in assessing penalties for a violation of this section. The penalty amounts contained in the table in paragraph (1) of this subsection are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Utilities Code, Chapter 121, Subchapter E, or a safety standard or other rule prescribed or adopted under that subchapter. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The Commission retains full authority and discretion to cite violations of Texas Utilities Code, Chapter 121, Subchapter E, or a safety standard or other rule prescribed or adopted under that subchapter, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section. The penalty calculation worksheet shown in the table in paragraph (1) of this subsection lists the typical penalty amounts for certain violators, the circumstances justifying enhancements of a penalty, and the circumstances justifying a reduction in a penalty.

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

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202429

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 475-1295



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER EE. COMMISSIONER'S RULES ON REPORTING CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §61.1053

The Texas Education Agency (TEA) proposes new §61.1053, concerning reporting child abuse or neglect, including trafficking of a child. The proposed new section would implement Senate Bill (SB) 1831 and House Bill (HB) 1540, 87th Texas Legislature, Regular Session, 2021, by specifying signage requirements for posting the offenses of human trafficking on public and private school premises.

BACKGROUND INFORMATION AND JUSTIFICATION: SB 1831 and HB 1540, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), §37.086, requiring TEA to develop rules around signage requirements for posting the penal offenses of human trafficking on public and private school premises.

Proposed new §61.1053 would implement statute by specifying the penalties under Texas Penal Code, §20A.02(b-1), that must be included on each warning sign. The proposed new rule would also provide definitions and the required locations for warning signs in alignment with TEC, §37.086.

FISCAL IMPACT: Justin Porter, director for special education programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government required to comply with the proposal beyond what the authorizing statute requires. School districts, open-enrollment charter schools, and private schools will incur costs to comply with SB 1831 and HB 1540, 87th Texas Legislature, Regular Session, 2021. The costs would include printing, purchase, and posting of signage on and surrounding school premises.

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 create a new regulation to implement legislation that requires TEA to adopt rules related to signage requirements for human trafficking warning signs.

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: Mr. Porter 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 an increase in the safety of youth and the awareness of the penalties of trafficking of children and youth. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 15, 2022, and ends August 15, 2022. 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 15, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §37.086, as added by Senate Bill 1831 and House Bill 1540, 87th Texas Legislature, Regular Session, 2021, which requires Texas Education Agency to adopt rules regarding the placement, installation, design, size, wording, and maintenance procedures for the warning signs required under TEC, §37.086.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §37.086.

§61.1053. Required Signage Pertaining to Criminal Offenses of Human Trafficking.

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

(1) Premises--This term has the meaning assigned by Texas Health and Safety Code, §481.134.

(2) School--This term means a public or private primary or secondary school.

(b) Each school shall post warning signs at the following locations:

(1) parallel to and along the exterior boundaries of the school's premises;

(2) at each roadway or way of access to the premises;

(3) for premises not fenced, at least every five hundred feet along the exterior boundaries of the premises;

(4) at each entrance to the premises and building; and

(5) at conspicuous places reasonably likely to be viewed by all persons entering the premises.

(c) Each warning sign must:

(1) describe the offense of trafficking in persons as provided under Texas Penal Code, §20A.02(a). The sign must emphasize that an offense under Texas Penal Code, §20A.02, is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than

25 years if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(A) on the premises of or within 1,000 feet of the premises of a school; or

(B) on premises or within 1,000 feet of premises where:

(i) an official school function was taking place; or

(ii) an event sponsored or sanctioned by the University Interscholastic League was taking place;

(2) be written in English and Spanish;

(3) be at least 8.5 by 11 inches in size; and

(4) be properly maintained to ensure readability and protection from the elements for outdoor signs.

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

Filed with the Office of the Secretary of State on June 30, 2022.

TRD-202202453

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 14, 2022

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



CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER JJ. COMMISSIONER'S RULES CONCERNING INNOVATION DISTRICT

19 TAC §§102.1307, 102.1309, 102.1313

The Texas Education Agency (TEA) proposes amendments to §§102.1307, 102.1309, and 102.1313, concerning innovation districts. The proposed amendments would clarify reporting requirements for designated districts of innovation, update the list of prohibited exemptions, and clarify requirements for renewal of a local innovation plan.

BACKGROUND INFORMATION AND JUSTIFICATION: Chapter 102, Subchapter JJ, establishes provisions relating to the applicable processes and procedures for innovation districts.

The proposed amendment to Figure: 19 TAC §102.1307(d) would clarify the instructions and add specific fields for the district's county district number and month, day, and year for the term of the district's plan, which may not exceed five years. The proposed amendment to the figure would also add a specific checkbox for Texas Education Code (TEC), §21.102, Probationary Contract, which was not originally included in the figure but for which a specific exemption is claimed. Additionally, the proposed amendment to the figure would remove TEC, Chapter 21, Educators, Subchapter D, Continuing Contracts, and Subchapter E, Term Contracts. Districts may still claim exemptions for specific provisions in those subchapters. The figure would also remove TEC, §44.903, Energy Efficient Light Bulbs in Instructional Facilities, which was repealed by Senate Bill (SB) 668 and SB 1376, 86th Texas Legislature, 2019, and is no longer available for exemption.

The proposed amendment to §102.1307(g) would require the district to provide to TEA a link to the local innovation plan as posted on the district's website not later than the 15th day after the date on which the board of trustees finalizes a local innovation plan either through adoption, amendment, or renewal. Currently, the rule requires districts to submit a copy of the plan rather than a link. This change would facilitate the confirmation that, pursuant to TEC, §12A.0071, and 19 TAC §102.1305(e), the plan is clearly posted on the district's website for the term of the designation as an innovation district and would enable TEA to fulfill its requirement under TEC, §12A.0071, to post the current local innovation plan on TEA's Internet website.

The proposed amendment to §102.1309(a)(1)(H) would clarify that TEC, §37.005, Suspension, is prohibited from exemption. If a district elects to suspend a student pursuant to TEC, §37.005, it must comply with the requirements in that section. New subsection (a)(1)(J) would be added to include TEC, Chapter 39A, as a prohibited exemption to reflect the prohibition in TEC, §12A.004(a)(4). Additionally, the proposed amendment would add new subsection (a)(3) and (4) to clarify that TEC, Chapter 12, Subchapter C, and TEC, Chapter 12A, respectively, are prohibited from exemption. References to TEC, Chapter 41 and Chapter 42, would be removed from subsection (a) to reflect the repeal of those chapters from the TEC.

The proposed amendment to §102.1309 would also add new subsection (b)(3) to clarify that exemption from a requirement that would otherwise qualify the district for participation in a grant or program in the TEC is prohibited.

The proposed amendment to §102.1313(a)(3) would clarify that the district is no longer required to notify the commissioner of the board's intention to vote on the adoption of the renewal of a local innovation plan. Additionally, the proposed amendment would add new subsection (a)(3)(A) and (B). New subparagraph (A) would require the district to meet eligibility requirements under 19 TAC §102.1303 in order to be eligible to renew a local innovation plan, and new subparagraph (B) would clarify that a board of trustees that chooses to renew its local innovation plan must vote on the adoption of the renewal of the plan no later than the date on which the term of the current plan ends.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations. The proposed amendment to §102.1309 provides clarity by adding specific chapters, subchapters, and sections of the TEC from which a district of innovation may not be exempt. The proposed amendment to §102.1313 adds eligibility criteria for the purposes of renewing a local innovation plan and clarifies the final date on which a local innovation plan may be renewed by a board of trustees.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Jernigan 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 updates to Figure: 19 TAC §102.1307(d) that would clarify the instructions, add specific fields for district identification number and dates (M/D/YY) for the term of the plan, and remove a specific field to align with current law. Additionally, the proposed amendments would provide clarification regarding prohibited exemptions and the eligibility and timeline with respect to the renewal process and ensure that rule language is based on current law. The amendment to §102.1309 would update the sections of statute that are prohibited from exemption based on existing rule. The statutory citations being added are already prohibited pursuant to §102.1309(b); however, the addition specifically cites them in the rule under subsection (a). Additionally, the amendment to §102.1309 mirrors recently passed legislation, removes recodified chapters of code, and clarifies limitations of permissible exemptions. The amendment to §102.1313 specifies that the eligibility requirements for initial adoption of local innovation plan are applicable to renewal of a local innovation plan and clarifies the latest date on which the board of trustees may finalize the renewal of a local innovation plan. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 15, 2022, and ends August 15, 2022. 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 15, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code, §12A.009, which authorizes the commissioner to adopt rules to implement districts of innovation.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §12A.009.

§102.1307. *Adoption of Local Innovation Plan.*

(a) The board of trustees may not vote on adoption of a proposed local innovation plan unless:

(1) the final version of the proposed plan has been available on the district's website for at least 30 days;

(2) the board of trustees has notified the commissioner of education of the board's intention to vote on adoption of the proposed plan; and

(3) the district-level committee established under [the] Texas Education Code (TEC), §11.251, has held a public meeting to consider the final version of the proposed plan and has approved the plan by a majority vote of the committee members. This public meeting may occur at any time, including up to or on the same date at which the board intends to vote on final adoption of the proposed plan.

(b) A board of trustees may adopt a proposed local innovation plan by an affirmative vote of two-thirds of the membership of the board.

(c) On adoption of a local innovation plan, the district:

(1) is designated as a district of innovation under this subchapter for the term specified in the plan but no longer than five calendar years, subject to [the] TEC, §12A.006;

(2) shall begin operation in accordance with the plan; and

(3) is exempt from state requirements identified under [the] TEC, §12A.003(b)(2).

(d) The district shall notify the commissioner of approval of the plan along with a list of approved TEC exemptions by completing the agency form provided in the figure in this subsection.

Figure: 19 TAC §102.1307(d)
[Figure: 49 TAC §102.1307(d)]

(e) A district's exemption described by subsection (c)(3) of this section includes any subsequent amendment or redesignation of an identified state requirement, unless the subsequent amendment or redesignation specifically applies to an innovation district.

(f) The district shall ensure that a copy of the local innovation plan is posted on the district's website in accordance with [the] TEC, §12A.0071, for the term of the designation as an innovation district.

(g) Not later than the 15th day after the date on which the board of trustees finalizes a local innovation plan either through adoption, amendment, or renewal, the district shall provide a link to the local innovation plan as posted on the district's website [copy of the current local innovation plan] to the Texas Education Agency for posting on the agency website.

§102.1309. *Prohibited Exemptions.*

(a) An innovation district may not be exempted from the following sections of the Texas Education Code (TEC) and the rules adopted thereunder:

(1) a state or federal requirement, imposed by statute or rule, applicable to an open-enrollment charter school operating under [the] TEC, Chapter 12, Subchapter D, including, but not limited to, the requirements listed in [the] TEC, §12.104(b), and:

(A) TEC, Chapter 22, Subchapter B;

(B) TEC, Chapter 25, Subchapter A, §§25.001, 25.002, 25.0021, 25.0031, and 25.004;

(C) TEC, Chapter 28, §§28.002, 28.0021, 28.0023, 28.005, 28.0051, 28.006, 28.016, 28.0211, 28.0213, 28.0217, 28.025, 28.0254, 28.02541, 28.0255, 28.0258, 28.0259, and 28.026;

(D) TEC, Chapter 29, Subchapter G;

(E) TEC, Chapter 30, Subchapter A;

(F) TEC, §30.104;

(G) TEC, Chapter 34;

(H) TEC, Chapter 37, §§ 37.005, 37.006(i), 37.007(e), 37.011, 37.012, 37.013, and 37.020; [and]

(I) TEC, Chapter 39; and

(J) TEC, Chapter 39A.

(2) TEC, Chapter 11, Subchapters A, C, D, and E, except that a district may be exempt from [the] TEC, §11.1511(b)(5) and (14) and §11.162;

(3) TEC, Chapter 12, Subchapter C;

(4) TEC, Chapter 12A;

(5) [(3)] TEC, Chapter 13;

[(4) TEC, Chapter 41;]

[(5) TEC, Chapter 42;]

(6) TEC, Chapter 44, §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054;

(7) TEC, Chapter 45, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203;

(8) TEC, Chapter 46;

(9) TEC, Chapter 48; and

(10) TEC, Chapter 49.

(b) In addition to the prohibited exemptions specified in subsection (a) of this section, an innovation district may not be exempted from:

(1) a requirement of a grant or other state program in which the district voluntarily participates;

(2) duties that the statute applies to the execution of that power if a district chooses to implement an authorized power that is optional under the terms of the statute; [and]

(3) a requirement of a grant or other state program authorized in the TEC that would otherwise entitle the district to participation in that program; and

(4) [(3)] requirements imposed by provisions outside the TEC, including requirements under [the] Texas Government Code, Chapter 822.

§102.1313. *Amendment, Rescission, or Renewal.*

(a) A district innovation plan may be amended, rescinded, or renewed if the action is approved by a majority vote of the district-level committee established under [the] Texas Education Code (TEC), §11.251, or a comparable committee if the district is exempt from that section, and a two-thirds majority vote of the board of trustees.

(1) Amendment. An amendment to an approved plan does not change the date of the term of designation as an innovation district.

Exemptions that were already formally approved are not required to be reviewed.

(2) Rescission. A district must notify the Texas Education Agency within five business days of rescission and provide a date at which time it will be in compliance with all sections of the TEC, but no later than the start of the following school year.

(3) Renewal. During renewal, all sections of the plan and exemptions shall be reviewed and the district must follow all components outlined in §102.1307 of this title (relating to Adoption of Local Innovation Plan), except that a district is not required to notify the commissioner of education of the board's intention to vote on the adoption of the proposed plan under §102.1307(a)(2) of this title .

(A) A district must meet eligibility requirements under §102.1303 of this title (relating to Eligibility) in order to renew an innovation plan.

(B) The board of trustees may vote on adoption of the renewal of the innovation plan no later than the date on which the term of the current plan ends, subject to §102.1311 of this title (relating to Term).

(b) The district shall notify the commissioner [of education] of any actions taken pursuant to subsection (a) of this section along with the associated TEC exemptions and local approval dates.

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

Filed with the Office of the Secretary of State on June 30, 2022.

TRD-202202454

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 14, 2022

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 265. GENERAL SANITATION

SUBCHAPTER L. PUBLIC SWIMMING

POOLS AND SPAS

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 §§265.181 - 265.211 and new §§265.181 - 265.198, concerning Public Swimming Pools and Spas.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with House Bill (H.B.) 2205, 87th Legislature, Regular Session, 2021, which amended Texas Health and Safety Code, Chapter 341, by requiring the adoption by reference of a version of the International Swimming Pool and Spa Code (ISPSA), as defined by Texas Local Government Code, §214.103, that is not older than the version in effect on May 1, 2019, regarding all construction, alteration, ren-

ovation, enlargement, and repair of commercial swimming pools and spas.

H.B. 2205 does not require DSHS to adopt Chapter 1, Scope and Administration, of the ISPSA. H.B. 2205 does not affect requirements for pool yard enclosures imposed under Texas Health and Safety Code, Chapter 757. Texas Health and Safety Code, §341.0645(c)-(d) are added to comply with H.B. 2205.

H.B. 2205 authorizes the Executive Commissioner to authorize by rule a minor addition, alteration, renovation, or repair to an existing pool or spa and related mechanical, electrical, and plumbing systems in the same manner and arrangement as the Executive Commissioner authorized the construction of the pool or spa and related mechanical, electrical, and plumbing systems. H.B. 2205 provides that a person may use, maintain, and repair a pool or spa that was in compliance with the laws of this state on August 31, 2021, and related mechanical, electrical, and plumbing systems in accordance with the laws applicable to the pool or system on that date.

H.B. 2205, notwithstanding the above provisions, does not affect the authority of the Executive Commissioner to adopt rules regarding pool operation and management, water quality, safety standards unrelated to design and construction, signage, and enclosures.

H.B. 2205 also amended Texas Local Government Code, §214.103, to allow a municipality to adopt a more recent version of the ISPSA to apply in the municipality, to the extent a provision of a code adopted by a municipality conflicts with a law of this state or a regulation on pool operation and management, water quality, safety standards unrelated to design and construction, signage, or enclosures the law or regulation controls.

SECTION-BY-SECTION SUMMARY

Proposed repeal of §§265.181 - 265.211 removes outdated language and incorporates updated language in the new rules.

Proposed new §265.181 establishes scope and purpose and application of the proposed new rules and includes language adopting the 2021 ISPSA.

Proposed new §265.182 defines the terms used throughout this subchapter.

Proposed new §265.183 contains the instructions for plan submittal and includes the authority of the Executive Commissioner to authorize a minor addition, alteration, renovation, or repair to an existing pool or spa and related mechanical, electrical, and plumbing systems.

Proposed new §265.184 contains the safety requirements for slides and other aquatic play features such as climbing walls and floating amusement islands. Provisions of the requirement that play features or slides comply with the Texas Occupations Code that meet the definition of an amusement ride are described in this new section.

Proposed new §265.185 provides safety measures and closure instructions for a pool or spa if any submerged suction outlet cover is missing, broken or loose.

Proposed new §265.186 requires the pool or spa and structures in the pool or spa yard to be installed, maintained, repaired, replaced in accordance with the Texas Electrical Safety and Licensing Act, Texas Occupations Code and related rules.

Proposed new §265.187 establishes the water provisions for the water supply at pools and spas. It includes provisions that will al-

low the use of water from wells not regulated by the Texas Commission on Environmental Quality (TCEQ) and establishes requirements for testing and monitoring the water from these wells. Allowing the use of water from a non-TCEQ regulated water well is necessary for pools and spas that are located in remote areas of the state.

Proposed new §265.188 establishes requirements for proper disposal of wastewater from pools and spas.

Proposed new §265.189 establishes requirements for the supplemental and secondary water treatment pool and spa water treatment systems and the prohibition of the use of chlorine gas in new pool and spa construction. The rule contains provisions for the training of personnel for the operation of the disinfectant agent and any other potentially hazardous chemicals. The rule also includes the labeling of chemicals and the proper storage of the chemicals.

Proposed new §265.190 establishes general safety features for pools and spas, including safety signs, rope and float lines, depth demarcation tile lines, emergency summoning devices, and rescue equipment.

Proposed new §265.191 establishes requirements for lifeguard staffing, training, and continuing education.

Proposed new §265.192 contains the requirements for pool and spa enclosures.

Proposed new §265.193 contains the requirements for water quality in pools and spas.

Proposed new §265.194 establishes the requirements for the operation and management of pools and spas.

Proposed new §265.195 contains the safety requirements for aquatic activity devices and specific types of pools and spas.

Proposed new §265.196 provides the application requirements for an alternate method of disinfectant.

Proposed new §265.197 describes compliance, inspections, and investigations at pools and spas that is completed by DSHS or local regulatory authorities.

Proposed new §265.198 establishes the enforcement of the rules by DSHS or local regulatory authorities.

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 do not have foreseeable implications 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 repeal existing rules; and

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

DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

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

Donna Sheppard has also determined that there is no anticipated adverse impact on small businesses, micro-businesses or rural communities required to comply with the sections as proposed because the ISPSC, which is adopted by reference, contains construction requirements that were previously included in the repealed rules. The safety, operation, and fencing sections of the new rules were also included in the repealed rules.

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 are necessary to implement legislation that does not specifically state §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years that the rules are in effect, the public will benefit from adoption of the rules. The public benefit anticipated from the repeal of the rules and replacement with new rules is to adopt and implement new national safety standards and practices to ensure enhanced protection for the public from injury or drowning, or exposure to or contracting of a contagious disease in public pools and spas.

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 because the ISPSC, which is adopted by reference, contains construction requirements that were previously included the repealed rules. Also, the safety, operation, and fencing sections of the new rules were also included the repealed 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

Written comments on the proposal may be submitted to the Environmental Operations Branch Rules Coordinator, DSHS, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, or by email to EHGRulesCoordinator@dshs.texas.gov.

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 or (2) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed

before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R014" in the subject line.

25 TAC §§265.181 - 265.211

STATUTORY AUTHORITY

The repeals are authorized by Texas Health and Safety Code §341.002, which authorizes the Executive Commissioner of HHSC to adopt rules and establish standards and procedures for the management and control of sanitation and for health protection measures; and by Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals implement Texas Health and Safety Code, Chapters 341 and 1001; and Texas Government Code, Chapter 531.

- §265.181. *General Provisions.*
- §265.182. *Definitions.*
- §265.183. *Plans and Instructions.*
- §265.184. *General Construction and Design for Pools and Spas.*
- §265.185. *Decks and Deck Equipment for Pools and Spas.*
- §265.186. *Islands in Pools and Spas Constructed on or After the Effective Date of This Subchapter.*
- §265.187. *Pool and Spa Entry/Exits.*
- §265.188. *Diving Facilities for Pools.*
- §265.189. *Slides and other Aquatic Play Features.*
- §265.190. *Circulation Systems for Pools and Spas.*
- §265.191. *Filters for Pools and Spas.*
- §265.192. *Pumps and Motors for Pools and Spas.*
- §265.193. *Suction Outlet Systems (Suction Outlets) and Return Inlets for Pools and Spas.*
- §265.194. *Pool and Spa Surface Skimming and Perimeter Overflow (Gutter) Systems.*
- §265.195. *Electrical Requirements for Pools and Spas.*
- §265.196. *Lighting Requirements for Pools and Spas Constructed or Renovated on or After the Effective Date of this Subchapter.*
- §265.197. *Heaters.*
- §265.198. *Pool or Spa Water Supply and Drinking Water for All Pools and Spas.*
- §265.199. *Wastewater Disposal for Pools and Spas.*
- §265.200. *Disinfectant Equipment and Chemical Feeders.*
- §265.201. *Safety Features for Pools and Spas.*
- §265.202. *Lifeguard Personnel Requirements and Standards at Pools.*
- §265.203. *Pool Yard and Spa Yard Enclosures.*
- §265.204. *Dressing and Sanitary Facilities at Pools and Spas (Bathhouses).*
- §265.205. *Operation and Management of Pools and Spas.*
- §265.206. *Water Quality at Pools and Spas.*
- §265.207. *Request for Alternate Method of Disinfectant.*
- §265.208. *Certain Requirements for Spas.*
- §265.209. *Additional Requirements for Aquatic Activity Devices and Specific Pools.*
- §265.210. *Compliance, Inspections, and Investigations.*
- §265.211. *Enforcement.*

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

Filed with the Office of the Secretary of State on June 29, 2022.

TRD-202202448

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 834-6787



25 TAC §§265.181 - 265.198

STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code §341.002, which authorizes the Executive Commissioner of HHSC to adopt rules and establish standards and procedures for the management and control of sanitation and for health protection measures; and by Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new sections implement Texas Health and Safety Code, Chapters 341 and 1001; and Texas Government Code, Chapter 531.

§265.181. General Provisions.

(a) Scope and purpose. The purpose of this subchapter is to implement Texas Health and Safety Code, §341.064, Swimming Pools, Artificial Swimming Lagoons and Bathhouses, and §341.0645, Pool Safety.

(b) Adoption by reference. Department of State Health Services (DSHS) adopts by reference the 2021 International Swimming Pool and Spa Code (ISPSC) regarding construction, alteration, renovation, enlargement, and repair of commercial swimming pools and spas; the ANSI/APSP-16 American National Standard for Suction Outlet Fitting Assemblies (SOFA) for use in Pools Spas and Hot Tubs; and the ANSI/PHTA/ICC-7 American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins as specified in subsection (c) of this section.

(c) ISPSC sections adopted. DSHS adopts by reference the following chapters and sections from the ISPSC, except as provided in subsection (d) of this section: Section 102 in Chapter 1, Scope and Administration; Chapter 2, Definitions; Chapter 3, General Compliance, only as these sections and chapters relate to the construction, alteration, renovation, enlargement, and repair of commercial swimming pools and spas; Chapter 4, Public Swimming Pools; Chapter 5, Public Spas and Public Exercise Spas; and Chapter 6, Aquatic Recreation Facilities.

(d) ISPSC sections not adopted. DSHS does not adopt by reference the following chapters and sections from the 2021 ISPSC: Sections 102.7.1, 103, 104, 105, 106, 107, 108, 109.2, 109.3, 110, 111, 112, 113, and 114 in Chapter 1, Scope and Administration; Definitions in Chapter 102: Code Official, Deep Area, Design Professional, and Jurisdiction; Section 412.2 in Chapter 4, Public Swimming Pools; Section 509.3 in Chapter 5, Public Spas and Public Exercise Spas; Section 603.3 in Chapter 609, Aquatic Recreation Facilities; Chapter 7, On-ground Storable Residential Swimming Pools; Chapter 8, Permanent Inground Residential Swimming Pools; Chapter 9, Permanent Residential Spas and Permanent Residential Exercise Spas; and Chapter 10, Portable Residential Spas and Portable Residential Exercise Spas.

(e) Application of the rules. The rules in this subchapter establish minimum standards for swimming pools and spas concerning pool operation and management, water quality, safety standards unrelated to design and construction, signage, enclosures, and safety features intended to reduce to a practical minimum the possibility of drowning or injury to users.

(f) Date of construction. The date of construction of a pool, spa, or a bathhouse is the date that a building permit for construction is issued. If no building permit is required, the date that excavation or electrical service begins, whichever is earlier, is the date of construction. In the case of the latter, the owner or operator must produce adequate written documentation of the date of excavation or the beginning date of electrical service.

(g) Regulations not in the ISPSC. Regarding regulations in this subchapter not addressed by the ISPSC, local regulatory authorities may, with the exception of DSHS-approved alternate methods of disinfection set forth in §265.196 of this subchapter (relating to Request for Alternate Method of Disinfectant), adopt standards that vary from the standards in this subchapter; however, such standards must be equivalent to or more stringent than the standards in this subchapter.

(h) References to public swimming pools and public spas. The rules specify whether a particular provision concerns pool operation and management, water quality, safety standards unrelated to design and construction, signage, enclosures, and safety features applies to pools and spas constructed on or after the effective date of this subchapter or whether it applies to all public swimming pools and public spas regardless of the date of construction.

§265.182. Definitions.

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

(1) AED--Automated External Defibrillator. A device that automatically diagnoses the life-threatening cardiac arrhythmias of ventricular fibrillation and pulseless ventricular tachycardia and can treat those conditions by application of electricity which stops the arrhythmia, allowing the heart to re-establish an effective rhythm.

(2) Alternate method of disinfectant--A method of disinfectant for a pool or spa requiring approval by DSHS.

(3) Alternative communication system--Devices that alert multiple on-site staff when activated, such as pager systems, radios, or walkie-talkie communication systems. Used to notify on-site EMS, on-site medical staff, on-site certified staff such as lifeguards, or a commercial emergency monitoring service.

(4) ANSI--American National Standards Institute.

(5) APSP--Association of Pool and Spa Professionals now known as the Pool and Hot Tub Alliance (PHTA).

(6) ARC--American Red Cross.

(7) Artificial swimming lagoon--An artificial body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a disinfectant method. The term does not include a body of water open to the public that continuously recirculates water from a spring or a pool.

(8) ASPSA--American Swimming Pool and Spa Association.

(9) ASTM International--American Society of Testing Materials International.

(10) ASTM F2376--Standard Practice For Classification, Design, Manufacture, Construction, And Operation Of Water Slide Systems.

(11) Backflow prevention device--A device designed to prevent a physical connection between a potable water system and a non-potable source, such as a pool or spa, or a physical connection between a pool or spa and a sanitary sewer or wastewater disposal system.

(12) Breakpoint chlorination--The addition of enough of the chlorination compound to water to destroy chlorine demand compounds, chloramines, and any combined chlorine that is present. The amount added is normally 10 times the combined chlorine concentration. Breakpoint chlorination, also called "superchlorination," results in a decrease in eye irritation potential and "chlorine odors."

(13) BVM--Bag-Valve Mask. A handheld device used to provide positive pressure ventilation to persons who are not breathing adequately. Also known by its proprietary name, Ambu bag.

(14) Chlorine--An element that at room temperature and pressure is a heavy green-yellow gas that is used to sanitize water. Chlorine, when mixed with water, forms hypochlorous acid, which is the disinfecting agent, and hydrochloric acid.

(15) Cleansing shower--A shower with hot and cold running water and soap for the purpose of removing dead skin, sweat, dirt, and waste material from users.

(16) Combined chlorine--Also known as "chloramine(s)." Formed when free chlorine combines with nitrogen-containing compounds such as perspiration and ammonia. Combined chlorine, or chloramines, can cause eye and skin irritation, strong and unpleasant "chlorine" odors, and is not as effective as a sanitizer or disinfectant.

(17) Commercial pool and spa--A public swimming pool and spa as defined in paragraph (51) of this section, referring to public pool and in paragraph (54) of this section, referring to public spa.

(18) Cross-connection control device--A backflow prevention device as defined in this section.

(19) Cryptosporidium parvum--A microscopic parasite that is highly tolerant to chlorine disinfection and that causes the diarrheal disease cryptosporidiosis. It is commonly referred to as Crypto.

(20) Day camp--A day camp as described in the Texas Youth Camps Safety and Health rules, §265.11 of this chapter (relating to Definitions).

(21) Disinfectant--Energy, chemicals, or a combination of both used to kill or irreversibly inactivate microorganisms such as bacteria, viruses, and parasites.

(22) DPD--A chemical testing reagent (N, N-Diethyl-P-Phenylenediamine) used to measure the levels of free chlorine or bromine in water by yielding a series of colors ranging from light pink to dark red.

(23) DSHS--Texas Department of State Health Services.

(24) EMS--Emergency medical services.

(25) Emergency monitoring service--A service that provides an emergency summoning device at pools and spas that is monitored 24 hours a day off-site by personnel trained to identify pool and spa related emergencies, such as drownings. A service capable of contacting local EMS, providing a precise location of the emergency call to local EMS, and that has personnel trained to offer the caller instructions for assisting when possible.

(26) Exercise spa or swim spa--For purposes of the rules in this subchapter related to safety, operation and management, signage, and enclosures, exercise spas or swim spas are a variant of a spa in which the design and construction includes specific features and equipment to produce a water flow intended to allow recreational physical activity including swimming in place.

(27) Facility--A pool, spa, public interactive water feature or fountain, and restrooms, dressing rooms, equipment rooms, deck or walkways, beach entries, enclosure, and other appurtenances directly serving the pool or spa.

(28) FIFRA--The Federal Insecticide, Fungicide, and Rodenticide Act.

(29) Filter media--A finely graded material (for example, sand, diatomaceous earth, or polyester fabric) that removes filterable particles from the water.

(30) FINA--Fédération Internationale de Natation. The organization that administers international competition in aquatic sports.

(31) Floatation system--A combination of a float solution holding vessel and treatment system for the immersion and floatation of a person or persons in a temperature-controlled environment. Also known as a flotation system, sensory deprivation system or floatation chamber. For purposes of this subchapter, a floatation system is not considered a pool or spa.

(32) Free available chlorine or free chlorine residual--That portion of the total chlorine remaining in chlorinated water that is not combined with ammonia or nitrogen compounds and that will react chemically with bacteria or other pathogenic organisms in the water of a pool, spa, or lagoon.

(33) Gpm--Gallons per minute.

(34) Hyperchlorination--The intentional and specific raising of chlorine levels for a prolonged period-of-time to inactivate pathogens following a diarrheal release in a pool or spa as per the Centers for Disease Control and Prevention's Fecal Incident and Outbreak Response procedure.

(35) Island--A structure inside a pool where the perimeter is surrounded by the water in the pool and the top is above the surface of the pool.

(36) Langelier Saturation Index--A number indicating the degree of saturation in water related to calcium carbonate solubility. The number represents the ability of water to deposit calcium carbonate, or dissolve metal, concrete, or grout.

(37) Licensed design professional--A person licensed to engage in the practice of design in the state of Texas in accordance with relevant licensing laws, including an architect, electrician, and engineer.

(38) Licensed architect--A person licensed to engage in the practice of architecture in the State of Texas in accordance with the Texas Occupations Code, Chapter 1051, and related rules.

(39) Licensed electrician--A person licensed to perform electrical work on pools and spas in accordance with the Texas Electrical Safety and Licensing Act, Texas Occupations Code, Chapter 1305, and related rules.

(40) Licensed engineer--A person licensed to engage in the practice of engineering in the State of Texas in accordance with the Texas Engineering Practice Act, Texas Occupations Code, Chapter 1001, and related rules.

(41) Lifeguard--A person who supervises the safety and rescue of swimmers, surfers, and other water sports participants and who has successfully completed and holds a current ARC, Young Men's Christian Association, or equivalent Lifeguard Certificate from an aquatic safety organization, a current First Aid Certificate, and a current cardiopulmonary resuscitation (CPR) certificate received for training in CPR for adults, infants, and children and the use of an AED and BVM.

(42) Local regulatory authority--A county, municipality, or other political subdivision of the state having jurisdiction over pools and spas and associated facilities.

(43) mV--Millivolt.

(44) NCAA--National Collegiate Athletic Association.

(45) NRPA--National Recreation and Parks Association.

(46) ORP--Oxidation Reduction Potential. The measure of the oxidation-reduction potential of chemicals in water or the tendency for a solution to either gain or lose electrons. It is generally measured in millivolts (mV) by means of an electronic meter and depends upon types and concentrations of oxidizing and reducing chemicals in water.

(47) pH--A value expressing the relative acidic or basic tendencies of liquids, such as water, on a scale from 0 to 14 with 7.0 being neutral, values less than 7.0 being acidic, and values greater than 7.0 being basic.

(48) PHTA--Pool and Hot Tub Alliance. Formerly APSP.

(49) PIWF--Public interactive water feature and fountain. A PIWF includes any indoor or outdoor installation maintained for public recreation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays for the purpose of wetting the persons playing in the spray streams. It may be a stand-alone PIWF, also known as a splash pad, spray pad, or wet deck, or may share a water supply, disinfection system, filtration system, circulation system, or other treatment system that allows water to co-mingle with a pool.

(50) Pool yard or spa yard--An area that has an enclosure containing a pool or spa.

(51) Public pool--For purposes of the rules in this subchapter related to safety, operation and management, signage and enclosures, pools are classified and referred to as follows: any man-made permanently installed or non-portable structure, basin, chamber, or tank containing an artificial body of water that is maintained or used expressly for public recreation, swimming, diving, aquatic sports, or other aquatic activity. Public pools include but are not limited to activity pools, catch pools, lazy or leisure river pools, wave action pools, vortex pools, therapy pools, and wading pools. A public pool may be publicly or privately owned and may be operated by an owner, lessee, operator, licensee, or concessionaire. A fee for use may or not be charged. The term does not include a residential pool, artificial swimming lagoon, floatation system or chamber, or a body of water that continuously recirculates water from a spring.

(A) Class A pool--Any pool maintained or used, with or without a fee, for accredited competitive events such as FINA, United States Swimming, United States Diving, NCAA, or National Federation of State High School Association events. A Class A pool may also be used for recreational swimming.

(B) Class B pool--Any pool maintained or used for public recreation and open to the general public with or without a fee.

(C) Class C pool--Any pool that is not a Class A or B pool that is limited to occupants, members, or students and their guests,

but not to the general public. It is a pool operated for and in conjunction with:

(i) lodging, such as hotels, motels, apartments, condominiums, RV parks, or mobile home parks;

(ii) youth camps, property owner associations, private organizations, or clubs; or

(iii) schools, colleges, or universities while operated for academic or continuing education classes.

(52) Pools and Spas--Public swimming pools and public spas are referred to as pools and spas throughout this subchapter.

(53) Ppm--Parts per million.

(54) Public spa--A body of water intended for the immersion of persons in either hot or cold water circulated in a closed system and not intended to be drained and refilled after each use. A spa can include a filter, heater, a pump or pumps, blowers, and water sanitizing equipment. The term includes a swim spa or exercise spa. For purposes of the rules in this subchapter related to safety, operation and management, signage, and enclosures, spas are classified and referred to as follows:

(A) Class A spa--Any spa maintained or used, with or without a fee, for accredited competitive events such as FINA, United States Swimming, United States Diving, NCAA, and National Federation of State High School Association events.

(B) Class B spa--Any spa maintained or used for public recreation and open to the general public with or without a fee.

(C) Class C spa--A spa that is not a Class A or Class B spa that is open to occupants, members, or students and their guests, but not to the general public. It is a spa that is operated for and in conjunction with:

(i) lodging, such as hotels, motels, apartments, condominiums, RV parks, or mobile home parks;

(ii) youth camps, property owner associations, private organizations, or clubs; or

(iii) schools, colleges, or universities while operated for academic or continuing education classes, or hospitals or medical centers.

(55) Regulatory authority--A federal or state agency or local regulatory authority having jurisdiction over pools and spas, and associated facilities.

(56) Rescue tube--A piece of lifesaving equipment that is a part of the equipment used by lifeguards to make water rescue easier by helping support the victim's and rescuer's weight.

(57) Resident youth camp--A resident youth camp as described in the Texas Youth Camps Safety and Health rules, §265.11 of this chapter.

(58) Residential pool or spa--A pool or spa that is located on private property under the control of the property owner or the owner's tenant and that is intended for use by not more than two resident families and their guests. It includes a pool or a spa serving only a single-family home or duplex.

(59) Rinsing shower--A shower located on the pool or spa deck for the purpose of removing sand, dirt, sweat, and user hygiene products without the use of hot water or soap.

(60) Secchi disk--An 8-inch diameter disk with alternating black and white quadrants that is lowered in the pool and spa and is used to measure water turbidity and clarity.

(61) Secondary disinfection system--A process or system installed in addition to the standard disinfection system required on all pools and spas.

(62) Self-closing and self-latching device--A device or mechanism that causes a gate to automatically close without human or electrical power after it has been opened and to automatically latch without human or electrical power when the gate closes.

(63) Slide--A recreational feature with a flow of water and an inclined flume or channel by which a user is conveyed downward into a pool.

(A) Drop slide--A slide that drops users into the water from an elevated height into water.

(B) Pool slide--A slide having a configuration as defined in the Code of Federal Regulations, Chapter II, Title 16, Part 1207 by United States Consumer Product Safety Commission or is similar in construction to a playground slide that allows users to slide from an elevated height to a pool. This includes children's (tot) slides.

(C) Waterslide--A slide that runs into a landing pool or runoff through a fabricated channel with flowing water.

(64) Supplemental treatment system--A system, process, or water treatment which is not required on a public pool or spa for health and safety reasons that may be used to enhance overall system performance and improve water quality.

(65) Surf pool--A pool with less than 20,000 square feet of water surface area in which waves are generated and dedicated to the activity of surfing on a surfboard or analogous surfing device commonly used in the ocean and intended for sport. A surf pool is intended for the sport of surfing as opposed to general play activities in wave pools.

(66) Superchlorination--See paragraph (12) of this section, Breakpoint chlorination.

(67) TCEQ--Texas Commission on Environmental Quality.

(68) TDLR--Texas Department of Licensing and Regulation.

(69) Therapeutic pool or spa--A pool or spa that is operated exclusively for therapeutic purposes, such as physical therapy, and is under the direct supervision and control of licensed or certified medical personnel.

(70) Total alkalinity--A measure of the ability or capacity of water to resist change in pH, also known as the buffering capacity of water. Total alkalinity is measured with a test kit and expressed as parts per million (ppm) and consists mainly of carbonates, bicarbonates and hydroxides.

(71) Total chlorine--The sum of both the free available chlorine and combined chlorine (chloramines).

(72) UL--An independent testing laboratory (formerly Underwriters Laboratories).

(73) USCG--United States Coast Guard.

(74) User--A person using a pool, spa, or lagoon or adjoining deck.

(75) VGBA--The Virginia Graeme Baker Pool and Spa Safety Act. A federal law that requires drain covers to comply with entrapment protection requirements specified by the American National Standards Institute (ANSI) ANSI/APSP 16 performance standard or any successor standard, and ANSI/PHTA/ICC-7 American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins.

(76) Wading pool--A pool with a maximum water depth that is no greater than 18 inches. A wading pool may contain a PIWF.

(77) Wave pool--A pool, with less than 20,000 square feet of water surface area, designed to simulate breaking or cyclic waves for purposes of general play. A wave pool is intended for general play as opposed to a surf pool that is intended for sport.

(78) Written instructions--Written communication that provides directions for carrying out a procedure or performing a task. Written instructions can include manuals, journals, lists, printed materials, computer-generated materials, and handwritten materials. Written instructions may be maintained in electronic form so long as electronic use and transmission of the electronic materials does not present a risk to the health and safety of individuals accessing the electronic materials.

§265.183. Plans and Instructions.

(a) Plans for new construction of pools and spas. DSHS may review plans for pools and spas to ensure compliance with construction requirements. If DSHS intends to review plans, DSHS will notify the owner or operator in writing.

(b) Additions, alterations, renovations, or repairs authorized. The executive commissioner by rule shall authorize a minor addition, alteration, renovation, or repair to an existing pool or spa and related mechanical, electrical, and plumbing systems in the same manner and arrangement as the executive commissioner authorized the construction of the pool or spa and related mechanical, electrical, and plumbing systems.

(c) Accepted practice for pools and spas. The structural design and materials for pools and spas constructed before the effective date of this subchapter must be in accordance with accepted industry engineering practices and methods prevailing at the time of original construction unless otherwise stated in this subchapter.

§265.184. Slides and other Aquatic Play Features.

(a) Proper installation of a slide or other aquatic play feature. A slide or other aquatic play feature, such as a climbing wall, floating amusement island, zip line, or anchored floats, must be installed according to manufacturer's instructions or in accordance with the specifications established by a licensed engineer or licensed architect.

(b) Amusement ride. An aquatic play feature or slide that meets the definition of "Amusement Ride" in Texas Occupations Code, Chapter 2151 (the Amusement Ride Safety Inspection and Insurance Act) must comply with that chapter.

(c) Jumping rocks or ledges. Pools with diving or jumping rocks or ledges must be designed by a licensed engineer or licensed architect.

§265.185. Pumps and Motors for Pools and Spas.

A pump for a pool or spa must not be operated if the owner or operator of the pool or spa knows or should know in the exercise of ordinary care that the drain grate, suction outlet, or any suction outlet cover is missing, broken, or loose. If such a condition exists, the pool or spa must be closed and remain closed until corrected.

§265.186. Electrical Requirements for Pools and Spas.

(a) Licensed electrician required. The electrical system of a pool or spa and structures in the pool yard or spa yard must be installed, maintained, repaired, or replaced by a licensed electrician in accordance with the Texas Electrical Safety and Licensing Act, Texas Occupations Code, Chapter 1305 and related rules.

(b) Extension cords. Temporary extension cords and power connectors must not be used as a substitute for permanent wiring.

(1) All parts of an extension cord must be restrained at a minimum of 6 feet as measured along the shortest possible path from a pool or spa during times when the pool or spa is open for use.

(2) An extension cord may be used within 6 feet of the nearest edge of a pool or spa if a permanent wall exists between the pool or spa and the extension cord.

(3) The circuit supplying power to an extension cord must be protected by a ground fault circuit interrupter, commonly referred to as GFCI, when the extension cord is to be used within 6 feet of a pool or spa.

§265.187. Pool or Spa Water Supply and Drinking Water for All Pools and Spas.

(a) Water supply. For all pools and spas, the initial fill water and make-up water used to maintain the water level and water used as a vehicle for sanitizers or other chemicals for pump priming or for other additions must be from a public water system, as defined by 30 TAC §290.38 (relating to Definitions), or from a water well that complies with the requirements of subsection (c) of this section.

(b) Water distribution system. All portions of the water distribution system must be protected against backflow and back siphonage using a high hazard preventer such as a reduced-pressure-principle backflow preventer meeting the requirements of the American Society of Sanitary Engineering Standard 1013 2013, as amended, and approved for use in potable water systems possibly subjected to back siphonage or high back pressure or an air gap designed to ASME Standard A112.1.2.

(c) Private water supply. If the water supply providing water to the pool or spa does not meet the definition of a public water system, as defined in subsection (a) of this section, that water supply must comply with the following requirements.

(1) Water pressure system must be designed to:

(A) maintain a minimum pressure of 35 pounds per square inch (psi) at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection;

(B) maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions when the system is intended to provide firefighting capability; and

(C) maintain a minimum distribution pressure not less than 20 psi at any time.

(2) Coliform testing of the well water must be performed each month the pool or spa is open for use. Records of any bacteriological tests must be kept on-site for three years and made available during inspection.

(3) Chemical analysis must be for the secondary constituent levels set out by 30 TAC §290.118 (relating to Secondary Constituent Levels).

(A) Water samples for chemical analysis obtained from the entry point to the distribution system must be submitted once every three years to a laboratory certified by the TCEQ.

(B) Records of all chemical testing must be kept on-site for three years and made available during inspection.

(d) Drinking water provided. At least one drinking water fountain or other source of drinking water, such as bottled water, must be provided and available for pool and spa users at all pools and spas constructed on or after October 1, 1999, and must be available at all times the pool or spa is open for use. A faucet, spigot, or sink does not satisfy the requirements for providing drinking water. Glass containers must not be allowed on a deck, in the pool or spa, or anywhere within the pool yard or spa yard.

(1) The drinking water is not required to be chilled.

(2) The drinking water is not required to be in the pool or spa yard.

(3) When the drinking water is not located in the pool yard or spa yard, a sign with letters a minimum of 1 inch in height is required. The sign must be posted so that it is visible to users that informs the users of the location of the drinking water.

(e) Hose bibs. Hose bibs in the pool yard or spa yard must be protected with a vacuum breaker.

§265.188. Wastewater Disposal for Pools and Spas.

(a) Filter backwash wastewater disposal. Filter backwash, cartridge wash water, and drainage water that is not reused in the pool or spa must be discharged or disposed of in accordance with the requirements of the TCEQ or local regulatory authority.

(b) No direct connection. No direct mechanical (hard) connection may be made between the pool or spa, the drains, the chemical treatment equipment, or the system of piping and the sanitary sewer system, septic system, or other wastewater disposal system.

(c) Pool and spa backwash. Backwash water and draining water must be discharged through an air gap formed by positioning the discharge pipe opening at least two pipe diameters above the overflow level of any barriers that could cause flooding and submergence of the discharge opening or by other means in accordance with TCEQ requirements. Splash screening barriers are permitted, as long as the barriers do not destroy air gap effectiveness.

(d) Wastewater post treatment. Filter backwash water and circulation system drainage water must be treated either chemically or through use of settling tanks to eliminate or neutralize chemicals, diatomaceous earth, and other contaminants in the water that exceed discharge limits set by TCEQ or the local regulatory authority.

(e) Other wastewater or drainage water disposal facilities or lines. The location of other wastewater disposal facilities or lines must meet applicable standards of 30 TAC Chapter 307, Texas Surface Water Quality Standards, Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System, Chapter 311, Watershed Protection, and Chapter 315, Pretreatment Regulations for Existing and New Sources of Pollution, or the local regulatory authority.

§265.189. Disinfectant Equipment and Chemical Feeders.

(a) Disinfectant agent. Pool and spa water must be continuously disinfected by a chlorine or bromine disinfectant agent that can be easily measured by simple and accurate field tests.

(b) Supplemental treatment systems. Supplemental treatment systems may be installed and used on pools and spas.

(1) Supplemental treatment systems used only to treat water in a pool or spa and not a public interactive water feature or fountain (PIWF) are not required to meet the minimum 3-log or 2-log inactivation of *Cryptosporidium parvum*.

(2) Supplemental treatment systems used to treat water in a PIWF must comply with the requirements in §265.306(g) of this chapter (relating to Water Quality at Public Interactive Water Features and Fountains) referring to supplemental water treatment systems for PIWFs.

(3) Supplemental treatment systems must meet NSF Standard 50 or NSF Standard 60, have an Environmental Protection Agency (EPA) or FIFRA registration, and be used in accordance with the manufacturer's instructions.

(c) Secondary disinfection systems. Secondary disinfection systems may be installed and used on a pool or spa and must be certified, listed, and labeled to NSF Standard 50.

(1) Secondary disinfection systems must achieve a minimum 2-log (99%) reduction in the number of infective *Cryptosporidium parvum* oocysts per pass through the treatment system; and

(2) must be located in the treatment system so that the 2-log reduction is obtained.

(3) Validation records, as applicable, and operation records must be maintained for any secondary disinfection system or treatment, and must be maintained on-site, or made available to the inspector within five business days upon request if kept off-site.

(d) Water treatment chemicals. Treatment chemicals must be certified, listed, and labeled to either NSF Standard 50 or NSF Standard 60 or have an EPA FIFRA registration and be used only in accordance with the manufacturer's instructions.

(e) Chlorine gas prohibited. Use of compressed chlorine gas is prohibited in pools and spas constructed on or after January 1, 2021.

(f) Training and protection. Personnel responsible for the operation of the disinfectant agent and other potentially hazardous chemicals, whether it is the trained and certified operator or someone assigned to maintain a pool or spa when the trained and certified operator is not on-site, must be properly trained and provided with appropriate protective equipment and clothing, including rubber gloves and goggles, safety information, and safety data sheets. Safety data sheets covering all chemicals for which personnel are responsible must be kept on-site and be readily available.

(g) Application of disinfectant in a pool or spa. Automatic feeders that meet NSF Standard 50 for use in public pools and spas must be used and must operate in a manner that does not invalidate the NSF rating for the system and equipment.

(1) Controllers that adjust chemical feed either manually or automatically are required.

(2) Disinfection equipment must be selected and monitored so that continuous and effective disinfection can be achieved under all conditions.

(3) Disinfectant feed systems must have the capacity to maintain up to 5 parts per million (ppm) chlorine (or equivalent bromine level) in outdoor pools and spas and up to 3 ppm chlorine (or equivalent bromine level) in indoor pools and spas under all conditions of intended use.

(4) Skimmer baskets or floating dispensers may not be used to dispense disinfectant, chemicals that adjust pH, or algacides.

(h) Hand distribution of chemicals. Hand distribution of disinfectant chemicals, chemicals used to adjust pH, or algacides is prohibited when users are in the pool or spa. Before users reenter the pool

or spa following hand distribution of disinfectant chemicals, chemicals used to adjust pH, or algaecides, the following applies:

(1) tests of disinfectant levels and pH must be performed 30 minutes after hand distribution; and

(2) no one may reenter the pool or spa until the disinfectant levels and pH are checked and are found to be within the required range.

(i) Bulk chemical tanks. All chemical bulk and day tanks must be clearly labeled to indicate the tank's contents.

(j) Chemical storage areas.

(1) Disinfectant agents, other chemicals, and feed equipment must be stored so that pool and spa users and other unauthorized persons do not have access.

(2) Dry chemicals must be stored off the floor or in waterproof containers in a dry room and protected against flooding or wetting from floors, walls and ceiling.

(3) Chlorine compounds must not be stored in the same storage room or storage area as petroleum products.

§265.190. Safety Features for Pools and Spas.

(a) Safety rope and float lines and floor markings.

(1) Class A pools not being used for competitive events or lap swimming must have a rope and float line:

(A) provided between 1 and 2 feet on the shallow water side of the 5-foot depth and floats must be spaced at not greater than 7-foot intervals and secured so they will not slide or bunch up, and the stretched rope and float line must be a size to provide a good handhold and strong enough to support loads normally imposed by users; and

(B) be securely fastened to wall or deck anchors made of corrosion-resisting materials of the type that is recessed or removable and must have no projection that will constitute a hazard when the line is removed.

(2) Class B pools that are over 5-feet deep must have:

(A) a 4-inch minimum width row of floor tile or other permanent method using a color contrasting with the bottom of the pool at the transition point of the pool floor from the shallow area to the deep area of the pool;

(B) a rope and float line between 1 and 2 feet on the shallow water side of the 5-foot depth and floats must be spaced at not greater than 7-foot intervals and secured so they will not slide or bunch up; and

(i) the stretched rope and float line must be a size to provide a good handhold and strong enough to support loads normally imposed by users; and

(ii) the rope and float may be removed when the pool is used for lap swimming or for competitive events; and

(C) rope and float lines securely fastened to wall or deck anchors made of corrosion-resisting materials of the type that is recessed or removable and must have no projection that will constitute a hazard when the line is removed.

(3) Class C pools that are over 5-feet deep must have a 4-inch minimum width row of floor tile or other permanent method using a color contrasting with the bottom of the pool at the transition point of the pool floor from the shallow area to the deep area of the pool.

(A) A rope and float line may also be used in addition to the transition line and must be provided between 1 and 2 feet on the

shallow water side of the 5-foot depth. The floats must be spaced at not greater than 7-foot intervals and secured so they will not slide or bunch up. The stretched rope and float line must be a size to offer a good handhold and strong enough to support loads normally imposed by users.

(B) Rope and float lines must be securely fastened to wall or deck anchors made of corrosion-resisting materials of the type that is recessed or removable and must have no projection that will constitute a hazard when the line is removed.

(4) Wave pools, surf pools, and waterslide landing pools are not required to provide a safety rope on the shallow side of the change in floor slope.

(b) Depth markers. Depth markers in pools and spas constructed or renovated after the effective date of the rules of this subchapter or that are being replaced must be placed in the top 4-1/2 inches of the pool or spa wall just under the coping and be positioned to be read by a user while in the pool.

(c) Depth markers in spas. Spa depth markers must comply with the following:

(1) There must be no less than two depth markers for each spa, regardless of spa size and shape.

(2) Depth markers in spas must be permanent in nature with numbers and letters not less than 4 inches in height and must be clearly marked in a color contrasting to the background on which they are applied both on the deck and on the vertical wall of the spa.

(3) Depth markers in spas on the vertical wall must be positioned in the top 4-1/2 inches of the spa wall and be positioned to be read by a user while in the spa.

(4) Depth markers in spas must be spaced at not more than 25-foot intervals and must be uniformly located around the perimeter of the spa.

(5) Deck depth markers for spas must be positioned to be read while standing on the deck and must be slip-resistant.

(6) Depth markers for spas must have units of measurement that either spell out "feet" or "inches" or abbreviate "FT," "IN," or fractions of a foot.

(d) Deck "NO DIVING" marker and symbol. Where no diving markers and symbols are required in pools, the markers and symbols must comply with the requirements in the International Swimming Pool and Spa Code (ISPSA) and with the following:

(1) The no diving marker and symbol may not be less than 4 inches in height. The no diving symbol must consist of a diver's profile in a circle with a 45-degree slash through the diver.

(2) The color of the letters and symbol must contrast with the background on which they are applied, and the color must be permanent in nature.

(3) The no diving markers and symbols on the deck must be slip resistant.

(4) The no diving marker and symbol on the deck must be within 18 inches of the water's edge and positioned to be read while standing on the deck facing the water.

(5) If a permanent structure above the pool deck is within 5 feet of the water's surface, the 4-inch no diving marker and symbol must be affixed to the structure so that the warning is visible to persons who may attempt to use the structure for diving. The no diving symbol and warning are not required on diving boards or diving platforms,

ADA-compliant chair lifts, slide flumes, lifeguard stands, or bridges over the water.

(6) The no diving marker and symbol is not required on the interior tile line of a pool or in a spa.

(e) Starting platforms. Starting platforms must be used during official competition only or when there is direct supervision by the team coach, a qualified instructor, or a lifeguard. Starting platforms must be removed or secured to prevent inadvertent use when the starting platforms are not directly supervised.

(f) Safety signage. In addition to safety signs required in the ISPSC, the additional safety and operational signs are required for pools as follows.

(1) Signs must be in the pool yard, securely mounted as applicable, and readily visible to the pool user and must be posted within the pool yard unless otherwise stated within this subchapter.

(2) Sign panels must be durable for the weather conditions and the message surface must be clean and smooth and readily accept paint or precut lettering adhesives.

(3) Theming or artwork applied to signs must not invade the message panel and signs must have a distinct border.

(4) Multiple signs may be used or messages may be combined on one sign.

(5) Safety signs for pools constructed on or after the effective date of this subchapter or safety signs that are replaced at pools constructed before the effective date of this subchapter must be in compliance with Figure 25 TAC §265.190(f)(5). Figure: 25 TAC §265.190(f)(5)

(6) In areas of Texas where the majority of residents are non-English speaking, in addition to signs in English, signs and other written warnings or information required by the rules in this subchapter may be posted in the predominant language.

(7) Variations of the language of the required safety signs in Figure 25 TAC §265.190(f)(5) are allowed if the language of the safety signs is substantially equivalent to the language in Figure 25 TAC §265.190(f)(5) and if local regulatory officials that regulate swimming pools and spas approve the variations before the sign is posted in the pool yard.

(g) Rescue equipment. A pool must have at least one ring buoy with throwing rope and a reaching pole for every 2000 square feet of pool surface area up to 6000 square feet. If the pool has over 6000 square feet of surface area an additional ring buoy, throw rope, and reaching pole must be provided for each additional 4000 square feet of surface area or fraction thereof. The reaching poles and ring buoys with rope must be visible and readily accessible from all areas of the pool yard.

(1) The reaching pole must be light, strong, non-telescoping, and at least 12 feet long. The pole must be constructed of fiberglass or other material that does not conduct electricity and must have a body hook or shepherd's crook with blunted ends attached.

(2) The throwing rope must be 1/4-inch to 3/8-inch in diameter, with a length at least two-thirds the maximum width of the pool. A USCG-approved ring buoy, maximum 24-inches in diameter, must be attached to the throwing rope.

(h) Certain safety requirements for spas.

(1) Signs for spas constructed on or after the effective date of this subchapter or safety signs that are replaced at spas constructed before the effective date of this subchapter must be securely mounted

and readily visible to spa users and must be inside the spa enclosure as required in Figure 25 TAC §265.190(h)(4), Required Spa Signs.

(2) Safety signs can be combined on one sign or posted individually.

(3) Variations of the language of the required safety signs in Figure 25 TAC §265.190(h)(4) are allowed if the language of the safety signs is substantially equivalent to the language in Figure 25 TAC §265.190(h)(4) and if local regulatory officials that regulate swimming pools and spas approve the variations before the sign is posted in the pool yard or spa yard.

(4) Safety signs for spas constructed on or after the effective date of this subchapter, or safety signs that are replaced at pools constructed prior to the effective date of this subchapter, must be in compliance with Figure 25 TAC §265.190(h)(4). Figure: 25 TAC §265.190(h)(4)

(i) Emergency summoning device. A pool or spa must have a minimum of one emergency telephone, emergency monitoring contact device, or alternative communication system that is capable of immediately summoning emergency services and that is readily accessible, within 200 feet of the water, and is functioning at all times the pool or spa is open for use. Where a pool or spa has a seasonal operation schedule, the emergency summoning device must be functioning 24 hours a day during the entire season the pool or spa will be in use. Clear operating instructions for the emergency summoning device must be provided.

(1) A fixed-location telephone, emergency monitoring device, or alternative communication system must be visible, have no obstruction to access, and have some method of identification that enables the telephone or other device or system to be easily identified by users.

(2) A telephone or emergency monitoring device must not be answered by an on-site office. An alternative communication system must not be answered by an on-site office unless the alternative communication system complies with paragraph (5) of this subsection.

(3) A telephone must be capable of making calls to 911 dispatch or to an emergency service.

(4) An emergency monitoring contact device, when activated, must directly connect to a 24-hour monitoring service, or directly to 911 dispatch or to emergency medical services.

(5) An alternative communication system that contacts an on-site office may be used if the pool or spa is in a remote area with limited or delayed emergency medical services response times and there are employees on-site that are trained and certified or licensed to perform emergency medical intervention when the pool or spa is open for use.

(6) A cell phone that is dedicated for use at the pool or spa that is mounted in the pool yard or spa yard for public use and labeled as the emergency phone may be used if the cell phone is activated by a service provider, is provided with a permanent power supply, and is capable of reaching the emergency service provider or 911 emergency services.

(7) A sign must be posted above the emergency summoning device whether it is a phone, emergency monitoring device, or alternative communication device with the precise location of the pool or spa, such as an address, building number, GPS location, or other location identifying information in letters a minimum of 1-inch in height.

(j) Lighting at pools and spas. Lighting at pools and spas that operate before sunrise and after sunset must be provided a minimum

30 minutes before sunrise and a minimum of 30 minutes after sunset or while the pool or spa is open.

§265.191. Lifeguard Personnel Requirements and Standards at Pools.

(a) Lifeguards required. Pools and spas are required to meet the operational standard that is most applicable to their respective use. For example, a pool or spa that is normally operated as a Class C pool or spa but is occasionally made available to the public, with or without a fee, must meet Class B lifeguard standards when the pool is open to the general public, with or without a fee. A minimum of two lifeguards must be provided at:

- (1) Class A pools during competitive events;
- (2) Class B pools whenever the Class B pool is open;
- (3) any pool where a user enters the water from any height above the deck or wall, including from diving boards, diving platforms, drop slides, waterslides, starting platforms, zip lines, or climbing walls that are open for use;
- (4) any wave or surf pool; or
- (5) any pool while it is being used for the recreation of youth groups, including youth camps, visiting childcare groups, or visiting school groups, and a minimum of two lifeguards must be provided by either the aquatic facility or by the youth group using the aquatic facility.

(b) Closing diving boards, diving platforms, drop slides, waterslides, starting platforms, zip line, or climbing wall. A diving board, diving platform, drop slide, waterslide, starting platform, zip line, climbing wall, or any other structure that allows entry from any height above the deck will be considered open unless there is a lock or chain or other method used to prevent access to these structures and a sign is posted on the entry to these structures stating that they are closed.

(c) Lifeguards at spas. Lifeguards are not required at spas.

(d) Lifeguard staffing plan required. A staffing plan specifying the number of on-duty lifeguards must be prepared by the pool operator, lifeguard supervisor, or pool owner and must provide adequate supervision and close observation of all users at all times. A copy of the plan must be available on-site and be provided to a DSHS or local regulatory authority inspector upon request.

(e) Surveillance area. Each lifeguard must be given an assigned surveillance area commensurate with ability and training. The lifeguard must be able to view the entire assigned surveillance area.

(f) Other duties must not distract. Lifeguards conducting surveillance of users must not be assigned duties that would distract the lifeguard's attention from proper observation of the users or that would prevent immediate assistance to persons in the water.

(g) Lifeguard rotation required. When lifeguards are provided or required, a rotation procedure for lifeguards is required. Lifeguards must have break time from guarding activities as recommended by ARC or equivalent aquatic safety organization.

(h) Lifeguard training and drills. When lifeguards are provided or required, alertness and response drills and any other training is required, including:

- (1) a pre-season training program;
- (2) a continual "in-service" program of at least a minimum of 60 minutes for every 40 hours of employment by the lifeguard or other aquatic safety personnel;

(3) a review of the Centers for Disease Control and Prevention standards for responding to formed-stool contamination, diarrheal-stool contamination, vomit contamination, and contamination involving blood;

(4) performance audits as recommended by the ARC, Young Men's Christian Association, or by an equivalent aquatic safety organization; and

(5) a facility emergency action plan for an event, such as submersion, suspected spinal injury, medical emergency, thunderstorm, missing person, bad weather, or chemical exposure.

(i) Emergency action plan. Any pool or spa emergency action plan must contain the following:

- (1) a list of emergency phone numbers and contacts, including the trained and certified operator;
- (2) the location of the first-aid kit and other rescue equipment such as the AED, BVM, and backboard;
- (3) a response plan for inclement weather such as a thunderstorm, lightning, or high wind, including evacuation areas; and
- (4) a plan following the Centers for Disease Control and Prevention standards for responding to formed-stool contamination, diarrheal-stool contamination, vomit contamination, and contamination involving blood.

(j) Lifeguard records. All training must be reviewed as necessary and kept current. Lifeguard records must be kept on-site or made available to DSHS or local regulatory authority within three business days of the inspection. The following records pertaining to lifeguards must be kept three years:

- (1) each lifeguard's certification, including the expiration date; and
- (2) records of the most current training, including date, length of training, training topic, trainer name, and attendee.

(k) Lifeguard access to safety equipment. Lifeguards must have access to safety equipment including:

- (1) an Occupational Safety and Health Administration (OSHA) compliant, minimum 24-unit first aid kit housed in a durable weather-resistant container that is fully stocked and ready for use. The kit must include disease transmission barriers and cleaning kits meeting OSHA standards;
- (2) at least one backboard equipped with a head immobilizer and sufficient straps to immobilize a person to the backboard located close enough to a pool or spa to enable a two-minute response time to an incident in a pool or spa.
- (3) at least one portable AED and one BVM kept in a secure location that can be easily and quickly accessed by lifeguards or other trained personnel.

(l) Lifeguard stands. OSHA-compliant lifeguard stands with platforms for lifeguards are required where water depth is greater than 5 feet and must have a protective umbrella or sunshade high enough to give lifeguards a complete and unobstructed view of the assigned area of surveillance for the lifeguards. Lifeguard stands and platforms must be located such that there are no hazards such as electrical wires directly overhead.

(m) Personal lifeguard equipment. Each lifeguard must be provided with the following personal equipment:

- (1) uniform attire that readily identifies the lifeguard as a staff member and a lifeguard;

(2) a rescue tube with attached rope or strap;

(3) personal protective devices including a resuscitation mask with one-way valve and non-latex, non-powdered, single use disposable gloves worn in a hip pack or attached to the rescue tube; and

(4) a whistle or other signaling device for communicating to users, other lifeguards, or staff.

(n) Minimum lifeguard standards. The standards in this subsection are considered minimum standards. Pool owners or operators may require additional and more stringent lifeguard policies, procedures, staffing requirements, training requirements, and performance audits.

§265.192. Pool Yard and Spa Yard Enclosures.

(a) Fence or barrier required. All pool yards and spa yards must be completely enclosed by a fence, wall, or equivalent barrier that is durable and is not easily climbed. An enclosure can surround multiple pools and spas within an aquatic facility.

(1) Planters, light poles, and other structures and site furnishings must not be permitted within 36 inches, as measured horizontally, outside of the enclosure.

(2) Planters, light poles, and other structures and site furnishings inside the pool or spa enclosure must be constructed and placed such that the fence is not made easily climbable from outside the pool or spa enclosure.

(3) Tree limbs must be kept trimmed to prevent a tree or the limbs of the tree from being used by children to climb over the enclosure.

(4) Solid barriers that do not have openings must be smooth and not have any indentations or protrusions that could be used as a handhold or foothold except for normal construction tolerances and tooled masonry joints on the side away from the pool or spa.

(b) Enclosures for Class A and Class B pools and spas and resident youth camp pools and spas. Enclosures for Class A and Class B pools and spas and resident youth camp pools and spas must meet the following requirements.

(1) Class A and B pools and spas and pools and spas at resident youth camps must have an enclosure consisting of a fence, portion of a building, wall or other durable enclosure, or an equivalent structure. Chain link material with a maximum opening of 1-3/4 inch mesh may be used for fencing at Class A, Class B, and residential youth camp pools and spas.

(2) A building that serves as part of the enclosure must have doors or gates that open into the pool or spa yard only if:

(A) any doors or gates between the building and the pool or spa yard are for entry into a storage room, restroom, shower room, dressing room, or mechanical room adjacent to the pool or spa; and

(B) the room does not have any door or gate openings to the outside of the pool yard or spa yard enclosure.

(3) The enclosure, including doors and gates, must be designed and constructed so that it cannot be easily climbed and:

(A) have a minimum effective perpendicular height of at least 6 feet as measured from the ground surface on the outside of the enclosure;

(B) have no openings in the enclosure, either through or under it, which would allow passage of a 4-inch sphere;

(C) have no horizontal mid-rail and be designed and constructed so that it cannot be readily climbed;

(D) have all doors and gates in the enclosure directly and continuously supervised by staff at the pool during hours of operation or locked to prevent unauthorized entry; and

(E) have no windows in the enclosure lower than 6 feet from the ground as measured from outside of the enclosure that can be opened.

(4) Gates and doors of Class A, Class B, and resident youth camp pool and spa enclosures must open outward away from the pool or spa, be capable of being locked, and must be locked if the pool or spa is not open for use. The gate or door must be locked if the pool or spa is closed for repairs, hazards, weather related hazards, adding chemicals by hand, or any other condition that warrants closure of the pool or spa.

(c) Enclosures for pools and spas subject to Texas Health and Safety Code, Chapter 757. A pool or spa that is in a multiunit rental complex or owned, controlled, or maintained by a property owners association and subject to Texas Health and Safety Code, Chapter 757, must have an enclosure as required in Chapter 757.

(d) Enclosures for all other Class C and day camp pools and spas. A Class C or day camp pool or spa not subject to Texas Health and Safety Code, Chapter 757 must have an enclosure that complies with this subsection and, if applicable, subsection (h) of this section.

(1) The pool yard or spa yard enclosure must consist of one or a combination of a fence, portion of a building, wall, or other durable enclosure that meets the requirements of this section. The enclosure must comply with the following:

(A) The enclosure must have a minimum perpendicular height of at least 48 inches as measured from the ground surface on the outside of the enclosure.

(B) An enclosure with horizontal and vertical members constructed or replaced on or after January 1, 2021, must have no horizontal mid-rail and be constructed so that it cannot be easily climbed. The distance between horizontal members of the fence that is 48 inches in height must not be less than 45 inches.

(C) Openings in, under, or through all enclosures at Class C and day camp pools and spas must not allow the passage of a 4-inch diameter sphere.

(D) Chain link fencing material is prohibited for Class C pools and spas constructed on or after October 1, 1999. Pool and spa fences at Class C pools and spas constructed before October 1, 1999, that replace a chain link fence are prohibited from using chain link fencing material.

(E) Windows that are capable of being opened are not allowed as a part of a pool or spa enclosure unless those windows are above the required enclosure height as measured from the ground level outside of the pool enclosure, and have a maximum opening of 4 inches, or are provided with a non-removable screen.

(F) Doors or gates of a building that are capable of being opened are not allowed as part of an enclosure unless:

(i) the doors or gates between the building and pool yard or spa yard are for entry into a storage room, restroom, shower room, dressing room, or mechanical room adjacent to the pool or spa;

(ii) the room does not have any door or gate openings to the outside of the pool yard or spa yard enclosure; or

(iii) the pool yard or spa yard is indoor and complies with the requirements of subsection (h) of this section.

(2) Gates and doors of a pool or spa enclosure subject to this subsection must:

(A) be equipped with self-closing and self-latching devices meeting the definition in §265.182(62) of this subchapter (relating to Definitions);

(B) be designed to close and to keep the gate or door securely closed and latched whenever the gate or door is not in use;

(C) open outward away from the pool or spa;

(D) be capable of being locked and be locked if the pool or spa is not open for use; and

(E) be locked if the pool or spa is closed for repairs, hazards, weather-related hazards, adding chemicals by hand, or any other condition that warrants closure of the pool or spa.

(3) Self-closing and self-latching devices on gates and doors of a pool or spa constructed on or after January 1, 2021, must:

(A) have hand-activated door- or gate-opening hardware located at least 3-1/2 feet above the deck or walkway; or

(B) have hand-activated door- or gate-opening hardware located on the pool yard side of the gate that is at least 3 inches below the top of the gate;

(C) have a gate or enclosure with no opening greater than 1/2 inch in any direction within 18 inches from the latch including the space between the gate and the gate post to which the gate latches; and

(D) have a gate latch that may be located 42 inches or higher above the ground if the gate cannot be opened except by key, card, or combination on both sides of the gate.

(e) Entry into pool yard or spa yard. Pool yard and spa yard enclosures must be constructed so that all persons will be required to pass through an enclosure gate or door to gain access to the pool or spa. All gates and doors exiting a pool or spa yard must open into a public area or walkway accessible by all users of the pool or spa.

(f) Propping open gates prohibited. No gate or door into a pool yard or spa yard may be propped open or remain propped open unless an agent, employee, or contractor of the owner is present and doing construction, maintenance, or repair work in the pool yard or spa yard or on its enclosure that reasonably requires the gate to be propped open.

(g) Service gates or doors. Service gates or doors at a Class A, Class B, or Class C facility used only by service personnel are not required to be self-closing and self-latching. Service gates and doors must not be used as a user entry or exit and must be kept securely closed and locked when not in actual use by service personnel entering or exiting the pool or spa yard. A service gate or door may include:

(1) a gate or door used by chemical delivery services, facility maintenance services, and lawn and landscaping services; or

(2) a door or service window used solely by food service staff from a food preparation area, bar, or snack bar.

(h) Enclosures for pools and spas in a building. For pools and spas that are in a building, the interior or exterior building walls may be designated as the enclosure.

(1) Entry and exit gates or doors into the pool or spa located in a building must comply with the requirements for entry and exit gates

and doors for Class A, Class B, or Class C pool and spa gates and doors in subsections (b), (c), and (d) of this section, as applicable.

(2) Elevator doors are not to be used as an entry or exit into the pool yard or spa yard when the pool or spa is inside a building or accessed from the interior of a building.

(3) Where separate indoor and outdoor pools and spas are located at the same site, a door or gate may be provided between them if they comply with all the requirements in subsections (b), (c), and (d) of this section for Class A, Class B, and Class C pool and spa gates and doors, as applicable, except that if the gate or door between the indoor and outdoor pool or spa does not provide an exit from the pool or spa yard, that gate or door may open inward into the outdoor pool or spa yard.

§265.193. Water Quality at Pools and Spas.

(a) Environmental Protection Agency (EPA) registration. A sanitizer, disinfectant, or other chemical used to disinfect or sanitize the pool or spa water must be EPA-registered for use in pools and spas under the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) Algae. Pools and spas must be treated to eliminate algae in order to prevent creation of a slip hazard, to prevent the water from becoming cloudy reducing visibility in the pool or spa, and to prevent uncontrolled growth of algae that could harbor pathogens.

(c) Required chemical levels. Water quality for a pool or spa must meet the following criteria when the pool or spa is open for use. The water quality parameters in Figure 25 TAC §265.193(c) apply to both pools and spas unless otherwise indicated. Figure: 25 TAC §265.193(c)

(d) Cyanuric acid. Cyanuric acid and stabilized chlorine such as dichlor, must not be used in any indoor pool or spa or in therapy pools.

(e) Water clarity. Water clarity must be sufficient such that an 8-inch black disk or Secchi disk on the floor at the deepest part of the pool can be clearly and immediately seen by an observer on the water surface above the disk or by someone standing on the deck closest to the disk.

(f) Reliable means of water testing required. A reliable means of testing for pH, free and total (combined) chlorine, bromine, cyanuric acid, alkalinity, and calcium hardness to minimum and maximum levels and levels in between, must be provided and available for the pool operator at the pool or spa when the pool or spa is open for use.

(g) DPD chemical test. Free available chlorine levels and bromine levels must be determined using the DPD testing method.

(h) ORP reading frequency. ORP readings must be recorded at the same time required sanitizer and pH tests are performed where in-line ORP meters are used. The date and the mV level must be recorded in the required logs.

(i) Storage of test kits and reagents. Test kits and reagents must be stored according to the manufacturer's instructions and protected from extreme heat and cold and from exposure to water, chemicals, petroleum products, or any other element or environment that could adversely affect the efficacy of water quality test results.

(j) Accuracy of test reagents. Testing reagents must be changed at frequencies recommended by the manufacturer to ensure accuracy of the tests.

(k) Chemical balance. Water in the pool or spa must be chemically balanced. Testing methods to determine the chemical balance of the water in the pool or spa, such as the Langelier Saturation Index, must be conducted at least once every 10 days while the pool or spa is

open. The date of the test and the results of the testing and any adjustments made to the pool or spa to correct water quality must be recorded in the required logs.

(l) Water monitoring records of public pools and spas. A record of all pool and spa water chemical testing must be recorded in a pool or spa log, either electronically or manually in a logbook, and must be kept on-site or provided within three business days to DSHS or local health official when requested if the logs are not kept on-site. Records shall be maintained for a minimum of three years and must include:

(1) if multiple pools or spas on-site, identification of the pool or spa tested;

(2) date and time of testing;

(3) chemical levels as required in Figure 25 TAC §265.193(c) in accordance with the testing schedule requirements in subsection (o) of this section;

(4) mV of ORP meter where applicable; and

(5) any action taken to correct chemical readings including addition of sanitizer, algaecide, or chemical to correct pH and tests to ensure chemical levels return to required levels, closure of the pool or spa, formed stool or diarrhea in a pool or spa and remedial actions taken as a result, or any other significant action taken which impacts pool and spa water quality.

(m) Skimmers. Skimmers must not be used for dispensing chemicals into the pool or spa.

(n) Off-season circulation system operation. When an outdoor pool or spa is not in use for an extended period of time (such as off-season), clarity must be maintained. Circulation rates must provide acceptable water clarity as required in this section.

(o) Testing frequency and record keeping when pools and spas are open for use.

(1) When Class A and Class B pools and spas are open for use:

(A) Tests for disinfectant levels and pH must be made and recorded in pool or spa logs every two hours.

(B) If a system is used to automatically control disinfectant and pH, tests for disinfectant level and pH must be performed and the results recorded in the pool or spa logs at least three times per day and a reading of the automatic control device must also be made and recorded in the pool or spa logs.

(C) Where cyanuric acid is used either in stabilized chlorine or used as needed, tests for cyanuric acid levels must be performed once each week and the results recorded in the pool or spa log.

(2) Class C pools and spas that have on-site staff primarily responsible for pool and spa operations, such as lifeguards, must be tested for disinfectant levels and pH a minimum of three times a day. Results of the testing must be recorded in pool or spa logs.

(A) If a system is used to automatically control disinfectant and pH, testing for disinfectant level and pH must be performed and the results recorded a minimum of once a day and a reading of the automatic control device must also be made and the results recorded in the pool or spa log.

(B) Where cyanuric acid is used either in stabilized chlorine or as needed, tests for levels of cyanuric acid must be performed once each week and the results recorded in the pool or spa log.

(3) Class C pools and spas that do not have on-site staff primarily responsible for pool and spa operations, such as lifeguards, must be tested for disinfectant levels and pH a minimum of one time a day and the results must be recorded in the pool or spa log.

(A) If a system is used to control disinfectant and pH electronically, and the system has the ability to record and transmit the mV level or free chlorine level and pH to the trained and certified operator once a day, sanitizer level and pH must be measured once each week using a test kit and recorded in the pool or spa log.

(B) A reading of the automatic control device must also be recorded at the same time the sanitizer level and pH are measured using the test kit and recorded in the pool or spa log.

(C) Where cyanuric acid is used either in stabilized chlorine or as needed, tests for levels of cyanuric acid must also be performed once each week and the results recorded in the pool or spa log.

(4) Other required tests for pools and spas. Tests for alkalinity, calcium hardness, and chemical balance must be performed at least once each 30 days, or more often if necessary, to maintain required water quality parameters in subsection (c) of this section and water clarity requirements in subsection (e) of this section. Results of the tests must be recorded in the pool or spa log.

(5) Records of all testing of the pool and spa water must be maintained for at least three years and be available or made available upon request by DSHS or local regulatory authority. If records are stored off-site, they must be provided within five business days.

(p) Cyanuric acid levels must not exceed 100 ppm. Whenever cyanuric acid levels exceed 100 ppm the following is required.

(1) Sanitizer level must be raised to 2.0 ppm free available chlorine and maintained at that level until the cyanuric acid level drops to less than 100 ppm.

(2) Sanitizer level, pH, and cyanuric acid levels must be measured and recorded at least once a day in the pool or spa log until the cyanuric acid level drops below 100 ppm.

(3) Records of cyanuric acid levels exceeding 100 ppm and actions taken to return those levels to at or below the allowable maximum must be recorded in the pool or spa log.

(q) Clarifiers, flocculants, and defoamers.

(1) Clarifiers, flocculants, and defoamers must be used per manufacturer's instructions and must not create a hazardous condition, compromise disinfectant efficacy, or interfere with other water quality measures in Figure 25 TAC §265.193(c).

(2) Clarifiers, flocculants, defoamers, and any other chemical used in a pool or spa must be certified, listed, and labeled to either NSF Standard 50 or NSF Standard 60.

(r) Chemical feed equipment. All chemical feed equipment must be maintained in good working condition at all times.

§265.194. Operation and Management of Pools and Spas.

(a) Operational standard for all pools and spas. Pools and spas must be required to meet the operational standard that is most applicable to their respective use. For example, a pool or spa that is being operated as a Class C pool or spa but is generally or for specific occasions made available to the public, with or without a fee, must meet Class B operational standards.

(b) Required operator certification. All Class A, Class B, and Class C pools and spas must be maintained under the supervision and direction of a properly trained and certified operator.

(1) The operator is not required to be on-site when the pool or spa is open.

(2) The operator may be responsible for multiple pools and spas.

(3) The trained and certified operator's name and contact information must be made available to on-site staff, such as lifeguards, and to property management companies or property managers, and must be made available at the request of DSHS or a local regulatory authority.

(c) Operator responsibilities. The trained operator must ensure that the staff is properly trained in day-to-day operations of the pool and spa circulation system, as defined in the International Swimming Pool and Spa Code, and that the circulation system is being maintained in good operating condition in accordance with manufacturer's instructions.

(d) Operator training and certification. Operator training and certification can be obtained by completion of one of the following courses or the equivalent:

(1) the NRPA, "Aquatic Facility Operator;"

(2) the PHTA, "Certified Pool Operator;"

(3) the ASPSA, "Licensed Aquatic Facility Technician;" or

(4) an equivalent course which requires testing and provides certification and that is approved by the local regulatory authority.

(e) Documentation required for pools and spas.

(1) Documentation for all pool and spa suction outlets confirming compliance with ANSI/APSP-16 or any successor standard, whether the suction outlet is manufactured or field fabricated, must be kept on-site at all times the pool or spa is open for use or must be made available within five business days upon request by a regulatory official.

(2) Documentation of compliance with ASME/ANSI A112.19.17, ASTM F 2387, or any successor United States Consumer Product Safety Commission approved standard for manufactured pool and spa Safety Vacuum Release Systems and Automatic pump shut-off systems must be kept on-site at all times the pool or spa is open for use or must be made available within five business days upon request by a regulatory official.

(f) Proper use and protection from chemicals in pools and spas. Personnel in charge of maintaining a pool or spa, whether it is the trained and certified operator or someone assigned to maintain a pool or spa when the trained and certified operator is not on-site, must be properly trained in accordance with §265.193 of this subchapter (relating to Water Quality at Pools and Spas).

(1) The use of chemicals at pools and spas must be according to the chemical manufacturer's directions.

(2) No chemical may be used in a way that violates the manufacturer's instructions for the chemical feed system or NSF 50 certification of that chemical feed system.

(g) Pool and spa equipment access. Pool and spa circulation equipment, mechanical spaces, and chemical storage spaces, whether indoors or out-of-doors, must be inaccessible to pool and spa users or other unauthorized persons. A warning sign against unauthorized entry must be posted on the entry door or gate to the pool and spa equipment room, building, or area.

(h) Water clarity standards for pools and spas. When the pool or spa is open and available for use the water must be of sufficient

clarity that the bottom of the pool or spa is clearly visible while the water is static. Visual occlusion by sediment or other matter must be checked before opening and periodically, as necessary, while the pool or spa is in use. The pool or spa must be open for use only if the bottom and the submerged suction outlets, when present, are clearly visible.

(i) Off-season water quality. When an outdoor pool or spa is not in use for an extended period of time, such as off-season, clarity must be maintained, and algae growth must be prevented; however, other water quality parameters as required in §265.193 of this subchapter do not need to be maintained. Other methods may be used to maintain pools and spas during extended periods of non-use if approved by local regulatory officials in writing and water clarity is maintained.

(j) Pool and spa closure. When a pool or spa is not in use, such as after seasonal operation, while under construction, renovation, or for any reason, entry to the pool yard or spa yard by users or other unauthorized persons must not be allowed. A sign must be posted on the entry gates indicating the pool and spa are closed. The pool and spa and facility, when closed, must not give off objectionable odors, become a breeding site for insects, or create any other nuisance conditions or hazards.

(k) Domestic animals prohibited at pools and spas. Domestic animals and other pets must not be allowed within a pool or spa enclosure area or in the pool or spa except as required by 28 CFR §36.302(c) and, if applicable, 24 CFR §100.204. Animals permitted under 28 CFR §36.302(c) and 24 CFR §100.204 must be allowed on the deck and within the pool and spa yard, but not in the pool or spa.

(l) Wave pools constructed or renovated on or after the effective date of this subchapter. The wave pools must have a minimum of two emergency shutoff switches capable of immediately stopping wave generation, one on each side of the wave pool, clearly marked as emergency shutoffs and readily accessible to lifeguards.

(m) Surf pools constructed or renovated on or after the effective date of this subchapter. The surf pools must have a minimum of two emergency shutoff switches capable of immediately stopping wave generation, one on each side of the surf pool, clearly marked as emergency shutoffs and readily accessible to lifeguards.

(n) Actual water level at pools and spas. The actual water level in pools and spas must be maintained within the designed operating water level range of the rim, gutter, or skimmer system. When the water level is below the operating water level range of the pool or spa rim, gutter, or skimmer system, the pool or spa must be closed.

(o) Use of personal flotation devices (PFD). No person may be prohibited from the use of a USCG-approved PFD in a pool or spa.

(p) Food and beverages. Food and beverages may be consumed in the pool or spa only if it is privately owned and operated. Consumption of food and beverages in a pool or spa that is not privately owned and operated is prohibited.

(q) Glass containers prohibited. Food and beverages in the pool or spa or in the pool yard or spa yard must be in non-breakable containers. Glass containers and glass furniture must not be allowed on a deck, in the pool or spa, or anywhere within the pool yard or spa yard.

(r) Covered trash receptacles required. Covered trash receptacles must be provided where food and beverages are allowed or served.

(s) Standing water on decks. Decks must not have standing water and deck drains must be cleaned and maintained to prevent water accumulating on a pool or spa deck.

(t) Slime and biofilm. Slime and biofilm layers must be removed from all accessible pool and spa surfaces including steps and ladders, sidewall tile, depth markers, and from all aquatic features such as slides, climbing walls, and diving boards.

§265.195. Additional Requirements for Aquatic Activity Devices and Specific Pools.

(a) Slide flumes. Slide flumes constructed on or after the effective date of this subchapter must be easily cleanable, have proper drainage in all valleys and dips, and have safety measures that ensure a rider cannot fall or be ejected from the flume.

(b) Wave pools.

(1) Wave pools must be fitted with a rope and float line located to restrict access to the caisson wall if required by the wave pool equipment manufacturer. Safety rope and float lines typically required at the shallow to deep water transition do not apply to wave pools.

(2) A minimum of two emergency shutoff switches to disable the wave action must be provided, one on each side of the wave pool.

(3) Caisson barriers must have no openings that would allow passage of a 4-inch sphere and must be provided for all wave pools. Wave pools using forced air to generate waves must not be required to have caisson barriers unless recommended by the manufacturer.

(4) Safety rope and float lines required at the shallow to deep water transition do not apply to surf pools.

(c) Leisure rivers. Leisure rivers constructed on or after the effective date of this subchapter must comply with the following:

(1) Obstructions such as landscaping, walls, or bridges are allowed provided they do not impact lifeguarding, sight lines, or rescue operations.

(2) Depth markers at leisure rivers are required on the sidewalls on both sides of all entry and exits, but if the depth is consistent, they are not required in the landscape, where there is no deck, or on the sidewalls in the main channel of the leisure river.

(d) Movable floor pools.

(1) The use of starting platforms in the area of a movable floor is prohibited when the water depth is shallower than 5 feet.

(2) Use of the moveable floor portion of the pool must not be open to users when the floor is being raised or lowered.

(3) Pools or spas with movable floors must have a sign indicating movable floor and varied water depth. The posted water depth must be the water level to the floor of the pool or spa measured vertically 3 feet from the wall of the pool or spa.

(4) A sign must be posted to inform the user that the pool or spa has a varied depth and refer to the sign showing the current depth.

(e) Surf pools.

(1) Surf pools must be fitted with a float line located to restrict access to the caisson wall if required by the surf pool equipment manufacturer.

(2) Wave caisson barriers must be provided for all surf pools and may not have an opening that would allow passage of a 4-inch sphere. Surf pools using forced air to generate waves may not have caisson barriers unless recommended by the manufacturer.

(3) Safety rope and float lines required at the shallow to deep water transition do not apply to surf pools.

(4) In addition to the requirements for lifeguards in §265.191 of this subchapter (relating to Lifeguard Personnel Requirements and Standards at Pools), lifeguards must be provided with any equipment necessary to reach the deepest area of the surf pool during an emergency. The equipment must be accessible to all lifeguards, clearly labeled "For Lifeguard Use Only," and be available when the surf pool is open and used for surfing.

(5) No surfer may enter the surf pool unless:

(A) tethered to the surfboard;

(B) wearing a USCG-approved PFD; or

(C) a lifeguard is in the surf pool in the surfing area directly supervising surfing activity.

(6) Non-surfing users may not be allowed to enter the wave areas of the surf pool over 5 feet of depth while waves are being generated unless they are wearing a USCG-approved PFD.

(f) Islands in Pools and Spas Constructed on or After the Effective Date of This Subchapter.

(1) An island not designed or intended for walking on by pool or spa users must have signs stating "No Entry" in letters a minimum of 2 inches in height.

(2) An island must have a demarcation tile line on the perimeter of the island that is a minimum of 4 inches in height and must be positioned in the top 4-1/2 inches of the island wall just under the coping.

§265.196. Request for Alternate Method of Disinfectant.

(a) Application. Pursuant to Texas Health and Safety Code, §341.064(b-1), an owner or operator may apply to use an alternate method of disinfectant.

(b) Submission. A completed application for use of an alternate method of disinfectant must be submitted to DSHS's Consumer Protection Division at least 180 days before the opening of the pool or spa. The application must include:

(1) the type and level of primary disinfectant;

(2) the type and level, where applicable, of any supplemental method of water treatment;

(3) the method and equipment used for storing, delivering, and measuring primary disinfectant levels and supplemental water treatment levels;

(4) data supporting the effectiveness of the primary disinfectant and supplemental method of water treatment in maintaining required water quality;

(5) descriptions of any specialized equipment, application methods, or other water treatment methods that may differ from the requirements in §265.193 of this subchapter (relating to Water Quality at Pools and Spas);

(6) a proposed testing schedule for determining levels of biological and chemical levels as specified by DSHS to ensure the health and safety of the public;

(7) a detailed drawing or map of the pool that indicates swimming areas and non-swimming areas; and

(8) any additional information DSHS requires to make its decision.

(c) Decision. DSHS approves or rejects a request to use an alternate method of disinfectant no later than 90 days after the completed application is submitted.

(d) Additional information. If DSHS requires additional information to make its decision, the application is not considered complete for purposes of subsections (b) and (c) of this section until DSHS receives the additional information as requested.

§265.197. Compliance, Inspections, and Investigations.

(a) DSHS or the local regulatory authority has the right to enter at all reasonable times any area or environment, including a building, storage, equipment room, bathhouse, or office to inspect and investigate for compliance with this subchapter, to review records, to question any person, or to locate, identify, and assess the condition of the pool or spa.

(b) Advance notice or permission for entry is not required.

(c) DSHS or the local regulatory authority must not be impeded or refused entry during its official duties by reason of any company policy.

(d) It is a violation of this subchapter for a person to interfere with, deny, or delay an inspection or investigation conducted by DSHS or a local regulatory authority.

§265.198. Enforcement.

(a) If a person violates Texas Health and Safety Code, §341.064 or §341.0645 or this subchapter, DSHS or the local regulatory authority may, in accordance with Texas Health and Safety Code, §341.092, institute a civil suit in district court for the assessment of civil penalties, injunctive relief, or both.

(b) A person who violates Texas Health Safety Code, §341.064 or §341.0645, or this subchapter may also be subject to a criminal penalty under Texas Health and Safety Code, §341.091.

(c) If a pool or spa closes, either voluntarily or by court order, public access to the pool or spa must be restricted and a notice posted on the entry gates or doors.

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

Filed with the Office of the Secretary of State on June 29, 2022.

TRD-202202450

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 834-6787



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 180. MONITORING AND ENFORCEMENT

SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL

28 TAC §180.62

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §180.62, concerning the Medical Quality Review Panel. Section 180.62 implements Texas Labor Code §§413.0512 and 413.05122.

EXPLANATION. The amendments change the 10-year lifetime maximum service limit with multiple two-year terms for membership on the Medical Quality Review Panel (MQRP) to a 10-year maximum term to more closely align with the language and intent of the statute. They provide for periodic review of members during their terms, and require members whose terms are expiring to submit new applications for membership on the MQRP. The amendments also update statutory references and make editorial changes for plain language and agency style.

Labor Code §413.0512 requires the medical advisor to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties §413.0511 requires. Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the MQRP. Subsection (a)(3) specifies that the rules must establish the maximum length of time a health care provider may serve on the MQRP. It does not state that that period must be a lifetime maximum, barring any future service; and it does not specify the length of the period.

The MQRP assists DWC's medical advisor in conducting medical case reviews as part of the medical quality review process to ensure that injured employees in the workers' compensation system get timely, cost-effective, appropriate, medically necessary health care to help them recover and return to work. The MQRP now has 60 members. Sixteen of those members (27%) will reach the 10-year lifetime maximum in the current rule in 2023. An additional three of those members (5%) will reach that maximum in 2024. Recruiting qualified members is challenging--in the last year, the MQRP lost six experienced physicians and has only been able to add two new members (one physician and one chiropractor). New members must be trained, and it takes time for them to gain the practical experience required to perform their functions effectively and efficiently.

Amending §180.62 is necessary to keep enough qualified members on the MQRP so DWC can continue to fulfill its statutory functions in regulating the workers' compensation system. An arbitrary lifetime maximum of 10 years on the MQRP impairs DWC's ability to keep qualified and experienced members on the MQRP, does not align with the language and intent of the statute, and does not serve the interest of the public or the state. In addition, the current two-year terms make the reapplication process nearly perpetual, which burdens members and staff needlessly. In contrast, the proposed amendments that set a maximum term of 10 years, that allow DWC to review members' eligibility periodically during the term; and that require members whose terms are expiring to submit new applications for membership to verify their qualifications and eligibility, are necessary, efficient, and practical.

Without the proposed amendments, the MQRP will lose about one third of its qualified, experienced members in the next two years. Even if the MQRP manages to recruit enough new members to replace them, the loss of experience and knowledge to help the new members adjust to their duties would make the training process even longer and more burdensome for the new members, the remaining members, and DWC. The proposed amendments will enable DWC to fulfill its statutory obligations; maintain an effective, experienced MQRP; and reduce adminis-

trative and training burdens for members, prospective members, and the agency.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Health and Safety Matthew Zurek has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Zurek expects that enforcing and administering the proposed amendments will have the public benefits of enabling DWC to retain and oversee enough qualified and experienced members on the MQRP, which will promote fair and consistent regulation; and ensuring that DWC's rules align with the language and intent of Labor Code §§413.0512 and 413.05122. The amendments will also have the public benefit of ensuring that DWC's rules are current, accurate, and easy to read and understand, which promotes transparent and efficient regulation.

Mr. Zurek expects that the proposed amendments will not increase the cost to comply with Labor Code §§413.0512 or 413.05122 because they do not impose requirements beyond those in the statutes or create obligations beyond those in the current rule. Instead, the amendments reduce the administrative burdens for current and prospective MQRP members, as well as DWC, by increasing the time between MQRP applications.

Labor Code §413.0512 requires the medical advisor to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties §413.0511 requires. Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the medical quality review panel. Subsection (a)(3) specifies that the rules must establish the maximum length of time a health care provider may serve on the MQRP. As a result, any cost associated with changing the lifetime maximum service period to a 10-year maximum term, after which former MQRP members may submit new applications for membership on the panel, does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments reduce administrative burdens; provide for more stable, consistent, and transparent regulation; update references; and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does

not impose a possible cost on regulated persons. In contrast, DWC expects that the reduced administrative burden from the amendments will reduce costs to regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

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

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

DWC made these determinations because the proposed amendments change the 10-year lifetime maximum service to a 10-year maximum term, update statutory references, and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs.

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

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on August 15, 2022. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments and received by DWC no later than 5:00 p.m., Central time, on August 15, 2022. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §180.62 under Labor Code §§413.0511, 413.05115, 413.0512, 413.05121, 413.05122, 402.00111, 402.00116, and 402.061.

Labor Code §413.0511 requires DWC to have a medical advisor and describes the medical advisor's duties, including making recommendations about rules and policies to regulate medical matters in the workers' compensation system.

Labor Code §413.05115 requires the commissioner to adopt criteria for the medical case review process, in consultation with the medical advisor.

Labor Code §413.0512 requires the medical advisor to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties §413.0511 requires.

Labor Code §413.05121 requires the medical advisor to establish the quality assurance panel within the MQRP.

Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the MQRP. Subsection (a)(3) specifies that the rules must establish the maximum length of time a health care provider may serve on the MQRP.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 180.62 implements Labor Code §413.05122, enacted by HB 2605, 82nd Legislature, Regular Session (2011).

§180.62. Medical Quality Review Panel.

(a) Purpose. The purpose of the Medical Quality Review Panel (MQRP) is to assist the medical advisor in the performance of the medical advisor's duties under Labor Code §413.0511 in accordance with the provisions of Labor Code §§413.0512, 413.05121, and 413.05122 [~~§413.0512 and §413.05121~~].

(b) Experts. Members of the MQRP who prepare reports for medical case review will [~~shall~~] be known as MQRP Experts.

(c) Composition. Applicants may be selected and appointed to the MQRP at the discretion of the medical advisor and the commissioner of workers' compensation (commissioner) in accordance with this section. The MQRP must [~~shall~~] be composed of health care practitioners appointed by the medical advisor and the commissioner in accordance with this section.

(1) The MQRP must have at least 25 members.

(2) The MQRP must, at a minimum, have members in the following health care specialty fields:

(A) Orthopedic Surgery--A medical doctor (MD) or a doctor of osteopathy (DO) with board certification in orthopedic surgery.

(B) Neurosurgery--An MD or DO with board certification in neurological surgery.

(C) Chiropractic--A licensed doctor of chiropractic.

(D) Occupational Medicine--An MD or DO with board certification in occupational medicine.

(E) Pain Medicine--An MD or DO with a board certification in a subspecialty of anesthesiology, neurology, or physical medicine.

(3) The MQRP may have members that include other types of health care practitioners determined to be necessary by the medical advisor and the commissioner.

(d) Eligibility. To be eligible to serve on the MQRP, a health care practitioner must meet the following criteria, as applicable:

(1) Possess an unrestricted license to practice in Texas with the appropriate credentials, as defined by §180.1 of this title (relating to Definitions);

(2) Be board [~~Board~~] certified in a specialty or subspecialty. An MD or DO is board-certified [~~board certified~~] in a specialty or subspecialty if the MD or DO holds:

(A) a general certificate in the specialty or a subspecialty certificate from one of the member boards of the American Board of Medical Specialties (ABMS); or

(B) a primary certificate in the specialty and:

(i) a certificate of special qualifications from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS); or

(ii) a certificate of added qualifications in the subspecialty from the AOABOS.

(3) Be in [~~An~~] active practice in Texas. "Active practice" means, within either of the last two calendar years, at the time of appointment to the MQRP, the applicant has:

(A) actively diagnosed or treated persons at least 20 hours per week for 40 weeks duration during a given calendar year; or

(B) performed administrative, leadership, or advisory roles in the practice of medicine.

(4) The medical advisor and the commissioner may waive the requirements of paragraphs (2) and (3) of this subsection [~~section~~] if needed to adequately perform medical case review.

(e) Term; Resignation; Removal.

(1) MQRP members will [~~shall~~] be appointed for a maximum term of 10 [~~two~~] years. They will [~~shall~~] serve until the expiration of their term, until their resignation, or until their removal from the MQRP. The division will review MQRP members periodically during their term to ensure their continued eligibility.

(2) An MQRP member may submit a new application for membership in the MQRP after the term expires. [An MQRP member may not serve on the panel for more than 10 years. Years served prior to September 1, 2013 do not count toward the 10 year limit.]

(3) An MQRP member may resign from the MQRP at any time.

(4) An MQRP member may be removed from the MQRP for cause at any time. The notice of removal will state the date of removal, which may be immediately after the member receives the notice or on a specified future date. Causes for removal include, but are not limited to [immediately upon notice to the MQRP member, or at such later date as the division may establish in such notice upon the occurrence of any of the following]:

(A) Failure to maintain [~~the~~] eligibility [~~requirements of~~] under this subchapter.[;]

(B) Failure to timely inform the division of conflicts of interest.[;]

(C) Repeated failure to timely review medical case review assignments or timely submit reports to the division.[;]

(D) Repeated failure to prepare the reports in the prescribed format. [; ø]

(E) Other issues deemed sufficient by the medical advisor or commissioner.

(f) **Prohibition.** An MQRP member must [shall] not use his or her position to influence an insurance carrier, agent, or other person or entity in connection with a personal or other insurance-related [insurance related] matter beyond referring to their position to demonstrate qualifications [except as otherwise provided by this subchapter].

(g) Quality Assurance Panel.

(1) The medical advisor will [shall] establish the Quality Assurance Panel (QAP) within the MQRP. All members of the QAP are members of the MQRP. They perform all the duties of an MQRP member under Labor Code §413.0512, as well as the duties of a QAP member under Labor Code §413.05121.

(2) A member of the QAP will [shall] also be known as an Arbiter.

(3) QAP members may provide any services to the medical advisor provided by Labor Code §§413.0512, 413.05121, and 413.05122 [§413.0512 and §413.05121], including, but not limited to:

(A) Serving [serve] as the chair to the quality assurance committee. [;]

(B) Serving [serve] as expert witnesses in enforcement actions as appropriate. [;]

(C) Providing [provide] an additional level of medical expertise and quality assurance to assist the medical advisor in the medical advisor's duties under Labor Code §413.0511. [; and]

(D) Performing [perform] medical case review if no other MQRP member is available in a specific area of expertise. In this case, the Arbiter would be ineligible from participating in [sitting on] the informal settlement process [ISC] for the subject the Arbiter reviewed.

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

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202433

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 804-4703



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER C. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (FCAA, §112, 40 CFR PART 63)

30 TAC §§113.100, 113.106, 113.110, 113.120, 113.130, 113.170, 113.180, 113.190, 113.200, 113.220, 113.230, 113.240, 113.250, 113.260, 113.280, 113.290, 113.300, 113.320, 113.330, 113.340, 113.350, 113.360, 113.380, 113.390, 113.400, 113.410, 113.420, 113.430, 113.440, 113.500, 113.510, 113.520, 113.540, 113.550, 113.560, 113.600, 113.610, 113.620, 113.640, 113.650, 113.660, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.740, 113.750, 113.770, 113.780, 113.790, 113.810, 113.840, 113.860, 113.870, 113.880, 113.890, 113.900, 113.910, 113.920, 113.930, 113.940, 113.960, 113.970, 113.980, 113.990, 113.1000, 113.1010, 113.1020, 113.1030, 113.1040, 113.1050, 113.1060, 113.1070, 113.1080, 113.1090, 113.1100, 113.1110, 113.1120, 113.1130, 113.1140, 113.1150, 113.1160, 113.1170, 113.1180, 113.1190, 113.1200, 113.1210, 113.1220, 113.1230, 113.1250, 113.1260, 113.1270, 113.1280, 113.1290, 113.1300, 113.1320, 113.1350, 113.1370, 113.1380, 113.1425, 113.1435, 113.1445, 113.1450, 113.1460, 113.1465, 113.1470, 113.1475, 113.1485, 113.1500, 113.1505, 113.1510, 113.1520, 113.1525, 113.1530, 113.1555

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 30 TAC Chapter 113 - Preamble is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 15, 2022, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§113.100, 113.106, 113.110, 113.120, 113.130, 113.170, 113.180, 113.190, 113.200, 113.220, 113.230, 113.240, 113.250, 113.260, 113.280, 113.290, 113.300, 113.320, 113.330, 113.340, 113.350, 113.360, 113.380, 113.390, 113.400, 113.410, 113.420, 113.430, 113.440, 113.500, 113.510, 113.520, 113.540, 113.550, 113.560, 113.600, 113.610, 113.620, 113.640, 113.650, 113.660, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.740, 113.750, 113.770, 113.780, 113.790, 113.810, 113.840, 113.860, 113.870, 113.880, 113.890, 113.900, 113.910, 113.920, 113.930, 113.940, 113.960, 113.970, 113.980, 113.990, 113.1000, 113.1010, 113.1020, 113.1030, 113.1040, 113.1050, 113.1060, 113.1070, 113.1080, 113.1090, 113.1100, 113.1110, 113.1120, 113.1130, 113.1140, 113.1150, 113.1160, 113.1170, 113.1180, 113.1190, 113.1200, 113.1210, 113.1220, 113.1230, 113.1250, 113.1260, 113.1270, 113.1280, 113.1290, 113.1300, 113.1320, 113.1350, 113.1370, 113.1380, 113.1425, 113.1435, 113.1445, 113.1450, 113.1460, 113.1465, 113.1470, 113.1475, 113.1485, 113.1500, 113.1505, 113.1510, 113.1520, 113.1525, 113.1530, and 113.1555.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking would revise Chapter 113 to incorporate by reference changes that the United States Environmental Protection Agency (EPA) has made to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, under 40 Code of Federal Regulations (CFR) Part 63. The EPA's changes to 40 CFR Part 63 include amendments

to a number of existing NESHAPs. The proposed amendments to Chapter 113 would incorporate by reference amendments that the EPA made to the NESHAP under 40 CFR Part 63 as published through March 9, 2022.

The Federal Clean Air Act (FCAA) Amendments of 1990, §112, requires the EPA to develop national technology-based standards for new and existing sources of hazardous air pollutants (HAP). The compounds which are considered to be HAP are listed in FCAA, §112(b). These technology-based standards intended to control HAP emissions are commonly called maximum achievable control technology (MACT) and generally available control technology (GACT) standards. The MACT standards are required to be based on the maximum degree of emission control that is achievable, taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. GACT standards reflect a less stringent level of control (relative to MACT) and are intended to be applied to non-major sources of HAP, known as area sources. The EPA has the option to apply either MACT or GACT to area sources, at their discretion.

The proposed rulemaking would incorporate amendments the EPA promulgated to 113 existing MACT and GACT standards for a variety of source categories. Many of the standards covered in this rulemaking were amended by the EPA as a result of FCAA requirements that the EPA periodically conduct risk assessments on each source category and determine if changes are needed to reduce residual risks or address developments in applicable control technology. The EPA conducted the risk assessment and incorporated necessary changes in the November 19, 2020, *Federal Register* (FR) rule titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act" and also known as the "final MM2A rule." These amendments implement the plain language reading of section 112 of the FCAA that allows a "major source" of HAP to reclassify as an "area source" at any time after acting to limit emissions below the qualifying threshold. These amendments also codify the EPA's January 25, 2018, Major MACT to Area (MM2A) policy memorandum that reversed the 1995 "Once In, Always In" policy, which made all major source designations permanent regardless of whether emission reductions lowered facility emissions of HAP to less than major source thresholds. This final action included amendments to the 40 CFR Part 63, Subpart A, General Provisions, applicability tables contained within most subparts of 40 CFR Part 63 to add a reference to the new provision in 40 CFR §63.1(c)(6) concerning reclassification. Also, there are revisions to several NESHAP subparts by removing the date limitation after which a major source cannot become an area source. The amendments also clarify and update work practice standards, compliance dates, recordkeeping, monitoring, reporting, and notification, including electronic notification. Some standards were also revised by the EPA in order to remove startup, shutdown, and malfunction (SSM)-related affirmative defense provisions, which were vacated in *Sierra Club v. Environmental Protection Agency*, 551 F. 3d 1019 (D.C. Cir. 2008).

Under federal law, affected industries are required to implement the MACT and GACT standards regardless of whether the commission or the EPA is the agency responsible for implementation. As MACT and GACT standards are promulgated or amended by the EPA, the standards are reviewed by commission staff for compatibility with current commission regulations and policies. The commission then incorporates the standards, as appropriate, into Chapter 113 through formal rulemaking procedures. Unless otherwise noted, all incorporations by reference

proposed in this rulemaking are without change (meaning that the standards are incorporated as published in the CFR, with no modifications to the text of the regulation being incorporated). After each MACT or GACT standard or amendment is adopted, the commission would seek formal delegation from the EPA under 40 CFR Part 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities, which implements FCAA, §112(I). Upon delegation, the commission would be responsible for administering and enforcing the MACT or GACT requirements.

The commission proposes to incorporate the following amendments that the EPA has made to the 40 CFR Part 63, General Provisions, List of HAP, and the federal MACT and GACT standards previously delegated and incorporated into the commission rules, by updating the federal promulgation dates and FR citations stated in the commission rules, as discussed more specifically in the Section by Section Discussion in this preamble. The 113 amended NESHAP that were delegated by the EPA effective March 13, 2018, along with their corresponding Chapter 113 sections and latest incorporation dates, are listed in the following table (Figure: 30 TAC Chapter 113 - Preamble).

Figure: 30 TAC Chapter 113 - Preamble

The EPA is continually in the process of revising 40 CFR Part 63 MACT and GACT regulations, and the EPA may adopt additional changes to certain standards after the proposal date of this rulemaking. The commission provides notice that in addition to the changes specifically described in the Section by Section Discussion portion of this preamble, the commission would consider the incorporation by reference (IBR) of any final amendments made by the EPA after the date the revisions to Chapter 113 are proposed. The commission solicits comment on the IBR of all final actions by the EPA, whether or not specifically identified in this notice, to facilitate state delegation and implementation of the final NESHAP. The adoption may include additional amendments incorporating by reference to 40 CFR Part 63, Subparts, which were published by the EPA after the proposal documents were prepared. The additional amendments may include sections listed under the Section by Section Discussion of this preamble: §113.180 (40 CFR Part 63, Subpart M), §113.200 (40 CFR Part 63, Subpart O), §113.740 (40 CFR Part 63, Subpart QQQ), §113.890 (40 CFR Part 63, Subpart FFFF), §113.1000 (40 CFR Part 63, Subpart QQQQ), §113.1130 (40 CFR Part 63, Subpart DDDDD), §113.1180, (40 CFR Part 63, Subpart II-III), §113.1290 (40 CFR Part 63, Subpart TTTTT), §113.1300 (40 CFR Part 63, Subpart UUUUU), §113.1425 (40 CFR Part 63, Subpart HHHHHH), §113.1465 (40 CFR Part 63, Subpart PPPPPP), §113.1470 (40 CFR Part 63, Subpart QQQQQQ), and §113.1555 (40 CFR Part 63, Subpart HHHHHHHH). The amendments may also include sections not included in the Section by Section Discussion of this preamble, but published in the *Federal Register*: §113.1390 (40 CFR Part 63, Subpart DDDDDD) and §113.1400 (40 CFR Part 63, Subpart EEEEEEE).

Section by Section Discussion

Throughout this section, the FR citations reference the first page of the notices and the accompanying publication dates.

§113.100, *General Provisions (40 Code of Federal Regulations Part 63, Subpart A)*

The commission proposes to amend §113.100 by incorporating by reference all amendments to 40 CFR Part 63, Subpart A, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart A, on August 30, 2016 (81 FR 59800), November 14, 2018 (83 FR 56713), July 17, 2019

(84 FR 34067), August 23, 2019 (84 FR 44225), July 6, 2020 (85 FR 40386), October 7, 2020 (85 FR 63394), November 19, 2020 (85 FR 73854), March 11, 2021 (86 FR 13819), and November 19, 2021 (86 FR 66038), (86 FR 66045), and (86 FR 66096).

The August 30, 2016, amendments revised 40 CFR §63.7(c)(2)(iii)(A) to add Methods 30A and 30B to the list of methods not requiring the use of audit samples. The amendments also revised 40 CFR §63.7(g)(2) to require the reporting of specific emissions test data in test reports, to modify the list of data elements to provide clarity, and to define and limit the extent of elements reported for each test method included in a test report. Additionally, the amendments revised Appendix A of 40 CFR Part 63, Method 320, §§13.1, 13.4, and 13.4.1 to indicate the correct Method 301 reference.

The November 14, 2018, amendments revised certain existing testing regulations to reflect corrections, updates, and the addition of alternative equipment and methods for source testing of emissions to improve the quality of data and provide flexibility in the use of approved alternative procedures. Specifically, 40 CFR §§63.7(g)(2), 63.7(g)(2)(v), and 63.8(e)(5)(i) were revised to require the reporting of specific test data for continuous monitoring system performance evaluation tests and ongoing quality assurance tests. These data elements are required in electronic and paper reports. These modifications ensure that performance evaluation and quality assurance test reporting include all data necessary for the compliance authority to assess and assure the quality of the reported data and that the reported information describes and identifies the specific unit covered by the evaluation test report.

The July 17, 2019, amendment revised 40 CFR §63.13(a) to change the address for EPA's Region I office for submitting certain air program reports to the EPA Region I states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont once the state is delegated. Although the change in the EPA's Region I mailing address does not affect states in EPA Region VI such as Texas, it is administratively more efficient to include this amendment than to specifically exclude it. The August 23, 2019, amendment revised 40 CFR §63.13(a) to reflect a change in address and organization name for EPA's Region 6 office, which includes Texas.

The July 6, 2020, amendments revised 40 CFR §63.14, Incorporation by Reference, by revising, redesignating, and adding paragraphs to update regulations based on the corresponding revisions to the Ethylene Production source category regulated under the NESHAP.

The October 7, 2020, amendments corrected and updated regulations for source testing of emissions. These revisions included corrections to inaccurate testing provisions, updates to outdated procedures, and approved alternative procedures to provide flexibility to testers. Specifically, 40 CFR §63.2 revised the definition of "alternative test method" to exclude "a test method in this chapter" because this clarified that use of methods other than those required by a specific subpart required the alternative test method review and approval process.

The November 19, 2020, amendments finalized revisions to the General Provisions that apply to NESHAP regulations in 40 CFR Part 63, Subpart A. The amendments altered 40 CFR §63.1, the applicability section, to explicitly state that a major source may become an area source at any time upon reducing potential to emit below the major source thresholds of 10 tons per year (tpy) of any single HAP and 25 tpy of any combination of HAP.

Specifically, the amendments added 40 CFR §63.1(c)(6), which includes a major source reclassifying to area source status remains subject to any applicable major source NESHAP requirements until the reclassification becomes effective. This section also clarified that sources may move from major to area source, then back to major again. The amendment to 40 CFR §63.2 included an interim ministerial revision to the definition "potential to emit" by removing the word "federally" from the phrase "federally enforceable." This interim ministerial revision is consistent with the court decision in *National Mining Association (NMA) v. EPA*, 59 F.3d 1351, 1363-1365 (D.C. Cir. 1995) that directed EPA to explain how federal enforceability enhanced effectiveness. This revision is also consistent with the EPA's long-standing policy that allows for any physical or operational limitation on the capacity of the stationary source to emit a pollutant to be treated as part of the source's design if the limitation or the effect it would have on emissions is, first, either federally enforceable or legally enforceable by a state or local permitting authority and, second, practicably enforceable. Also, amendments to this subpart clarified compliance dates, notification, and recordkeeping and reporting, including electronic reporting.

The March 11, 2021, amendments reflect a court order regarding the General Provisions for NESHAP issued on December 19, 2008, by the United States Court of Appeals for the District of Columbia Circuit (the court). The court vacated two provisions in the General Provisions that exempted sources from HAP nonopacity and opacity emission standards during periods of SSM. The court held that under the FCAA, emissions standards or limitations must be continuous in nature and that the SSM exemptions in these two provisions violate this requirement. This ministerial action revises these two NESHAP General Provisions in the CFR to conform to the court's order. Specifically, this rule is amending the CFR to reflect the 2008 court decision in *Sierra Club v. EPA* vacating 40 CFR §63.6(f)(1) and (h)(1). Removal of the two SSM exemptions in the General Provisions of the NESHAP at 40 CFR §63.6(f)(1) and (h)(1) has no legal effect beyond fulfilling the court's vacatur in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008) and is ministerial in nature. The court issued the mandate for its decision on October 16, 2009, at which point the vacatur became effective.

The November 19, 2021, amendments in 86 FR 66038 revised 40 CFR §63.14(n)(1) to correct publishing date of reference materials for use with 40 CFR §§63.3130(c), 63.3161(d) and (g), 63.3165(e), and Appendix A of 40 CFR Part 63, Subpart IIII. The November 19, 2021, amendments included in 86 FR 66045 revised 40 CFR §63.14 to incorporate by reference revised paragraphs, redesignated paragraphs, and added new paragraph regarding reference materials and test methods for use with 40 CFR Part 63, Subpart SSSSS. The November 19, 2021, amendments in 86 FR 66096 revised 40 CFR §63.14 to incorporate various test methods for use with 40 CFR Part 63, Subpart YY. (Editorial Notes: At 86 FR 66062, (cited as 86 FR 66045), and at 86 FR 66121, (cited as 86 FR 66096), November 19, 2021, in §63.14, paragraph (h) was amended by redesignating and adding new paragraphs; however, the redesignations and additions could not be performed because (h)(117) and (118) do not exist. These amendments could not be incorporated due to inaccurate amendatory instructions.)

§113.106, *List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List (40 Code of Federal Regulations Part 63, Subpart C)*

The commission proposes to amend §113.106 by incorporating by reference all amendments to 40 CFR Part 63, Subpart C, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart C, on January 5, 2022 (87 FR 393). The January 5, 2022, amendment added the substance 1-bromopropane or 1-BP, also known as n-propyl bromide or nPB (CAS No. 106-94-5), to the list of HAP established under FCAA §112(b)(1).

§113.110, Synthetic Organic Chemical Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart F)

The commission proposes to amend §113.110 by incorporating by reference all amendments to 40 CFR Part 63, Subpart F, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart F, on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 3 of 40 CFR Part 63, Subpart F, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising 40 CFR §63.9(j) regarding the provision for notification requirements to a change in information already provided, limited to a change to major source status; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.120, Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G)

The commission proposes to amend §113.120 by incorporating by reference all amendments to 40 CFR Part 63, Subpart G, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart G, on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.151(b)(2)(i)-(iii) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 1A of 40 CFR Part 63, Subpart G, by limiting 40 CFR §63.9 notification requirements to applicability, initial notifications, request for extension of compliance, notification that source is subject to special compliance requirements, change of information already provided, and electronic submission of notifications or reports.

§113.130, Organic Hazardous Air Pollutants for Equipment Leaks (40 Code of Federal Regulations Part 63, Subpart H)

The commission proposes to amend §113.130 by incorporating by reference all amendments to 40 CFR Part 63, Subpart H, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart H, on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.182(b)(2)(i)-(iii) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 4 of 40 CFR Part 63, Subpart H, by limiting 40 CFR §63.9 notification requirements to applicability, initial notifications, request for extension of compliance, notification that source is subject to special compliance requirements, change of information already provided, and electronic submission of notifications or reports.

§113.170, Coke Oven Batteries (40 Code of Federal Regulations Part 63, Subpart L)

The commission proposes to amend §113.170 by incorporating by reference all amendments to 40 CFR Part 63, Subpart L, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart L, on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.311(a) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also clarified that a source that reclassifies to an area source must follow the notification procedures of 40 CFR §63.9(j) regarding the provision for change in information already provided and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports.

§113.180, Perchloroethylene Dry Cleaning Facilities (40 Code of Federal Regulations Part 63, Subpart M)

The commission proposes to amend §113.180 by incorporating by reference all amendments to 40 CFR Part 63, Subpart M, since this section was last amended. During this period, the EPA amended Subpart M on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.324(g) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also clarified that an owner or operator of a dry cleaning facility that reclassifies from a major source to an area source must follow the procedures of 40 CFR §63.9(j) regarding the provision for change in information already provided and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports.

§113.190, Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N)

The commission proposes to amend §113.190 by incorporating by reference all amendments to 40 CFR Part 63, Subpart N, since this section was last amended. During this period, the EPA amended Subpart N on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.347(c)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 1 of 40 CFR Part 63, Subpart N, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.200, Ethylene Oxide Emissions Standards for Sterilization Facilities (40 Code of Federal Regulations Part 63, Subpart O)

The commission proposes to amend §113.200 by incorporating by reference all amendments to 40 CFR Part 63, Subpart O, since this section was last amended. During this period, the EPA amended Subpart O on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments, revised Table 1 of 40 CFR §63.360, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.220, Industrial Process Cooling Towers (40 Code of Federal Regulations Part 63, Subpart Q)

The commission proposes to amend §113.220 by incorporating by reference all amendments to 40 CFR Part 63, Subpart Q, since this section was last amended. During this period, the EPA

amended Subpart Q on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.405(a)(1) and (2) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 1 of 40 CFR Part 63, Subpart Q, by limiting 40 CFR §63.9, notification requirements, to applicability; initial notifications; request for extension compliance; notification of compliance status (NOCS); change in information already provided; and electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.230, Gasoline Distribution Facilities (40 Code of Federal Regulations Part 63, Subpart R)

The commission proposes to amend §113.230 by incorporating by reference all amendments to 40 CFR Part 63, Subpart R, since this section was last amended. During this period, the EPA amended Subpart R on November 19, 2020 (85 FR 73854) and December 4, 2020 (85 FR 78412). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart R, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The December 4, 2020, amendments streamlined existing fuel quality regulations, including removing unnecessary and out-of-date requirements, and replacing them with a single set of provisions and definitions that applies to all gasoline, diesel, and other fuel quality programs. The amendments revised 40 CFR §63.421 by changing the definitions for "oxygenated gasoline" and "reformulated gasoline" to mean the same as defined in 40 CFR §80.2.

The commission also proposes to amend the title of §113.230 to "Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (40 Code of Federal Regulations Part 63, Subpart R)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart R.

§113.240, Pulp and Paper Industry (40 Code of Federal Regulations Part 63, Subpart S)

The commission proposes to amend §113.240 by incorporating by reference all amendments to 40 CFR Part 63, Subpart S, since this section was last amended. During this period, the EPA amended Subpart S on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised 40 CFR §63.455(a) regarding the provision for the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 1 of 40 CFR Part 63, Subpart S, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.250, Halogenated Solvent Cleaning (40 Code of Federal Regulations Part 63, Subpart T)

The commission proposes to amend §113.250 by incorporating by reference all amendments to 40 CFR Part 63, Subpart T, since this section was last amended. During this period, the EPA amended Subpart T on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.468(a), (b), (c), and (d) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Appendix B of 40 CFR Part 63, Subpart T, by adding

40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.260, Group I Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart U)

The commission proposes to amend §113.260 by incorporating by reference all amendments to 40 CFR Part 63, Subpart U, since this section was last amended. During this period, the EPA amended Subpart U on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart U, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising 40 CFR §63.9(j) regarding the provision for notification requirements to a change in information already provided, limited to a change to major source status; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.280, Epoxy Resins Production and Non-Nylon Polyamides Production (40 Code of Federal Regulations Part 63, Subpart W)

The commission proposes to amend §113.280 by incorporating by reference all amendments to 40 CFR Part 63, Subpart W, since this section was last amended. During this period, the EPA amended Subpart W on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart W, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. Additionally, the table amendments specified that 40 CFR §63.1(c)(6) and 40 CFR §63.9(k) apply to basic liquid epoxy resins (BLR), wet strength resins (WSR), and WSR alternative standard and BLR equipment leak standard (40 CFR Part 63, Subpart H).

§113.290, Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X)

The commission proposes to amend §113.290 by incorporating by reference all amendments to 40 CFR Part 63, Subpart X, since this section was last amended. During this period, the EPA amended Subpart X on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart X, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.300, Marine Vessel Loading (40 Code of Federal Regulations Part 63, Subpart Y)

The commission proposes to amend §113.300 by incorporating by reference all amendments to 40 CFR Part 63, Subpart Y, since this section was last amended. During this period, the EPA amended Subpart Y on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.567(b)(2) and (3) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 1 of 40 CFR §63.560, Subpart Y, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

The commission also proposes to amend the title of §113.300 to "Marine Tank Vessel Loading Operations" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart Y.

§113.320, Phosphoric Acid Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AA)

The commission proposes to amend §113.320 by incorporating by reference all amendments to 40 CFR Part 63, Subpart AA, since this section was last amended. During this period, the EPA amended Subpart AA on September 28, 2017 (82 FR 45193), November 3, 2020 (85 FR 69508), and November 19, 2020 (85 FR 73854). The September 28, 2017, amendments included the EPA's reconsiderations of the residual risk and technology review (RTR) for the Phosphoric Acid Manufacturing source category. In response to two petitions concerning the August 19, 2015 RTR, the EPA revised the compliance date by which affected sources must include emissions from oxidation reactors when determining compliance with the total fluoride emission limits for superphosphoric acid process lines; revised the compliance date for the monitoring requirements for low-energy absorbers; clarified the blower design capacity option; and added the regression model option to the monitoring requirements for low-energy absorbers. The November 3, 2020, amendments finalized the NESHAP for the Phosphoric Acid Manufacturing source category. The amendments are in response to a petition for rulemaking on the mercury emission limit for existing phosphate rock calciners that was finalized on August 19, 2015. That emission limit was based on the MACT floor for existing sources for one facility, so the MACT floor did not accurately reflect the average emission limitation achieved by the units used to set the standard. Therefore, EPA revised the mercury MACT floor for existing calciners. The November 19, 2020, amendments revised Appendix A of 40 CFR Part 63, Subpart AA, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.330, Phosphate Fertilizers Production Plants (40 Code of Federal Regulations Part 63, Subpart BB)

The commission proposes to amend §113.330 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BB, since this section was last amended. During this period, the EPA amended Subpart BB on September 28, 2017 (82 FR 45193) and November 19, 2020 (85 FR 73854). The September 28, 2017, amendments included the EPA's reconsiderations of the RTR for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. In response to two petitions concerning the August 19, 2015 RTR, the EPA revised the compliance date by which affected sources must include emissions from oxidation reactors when determining compliance with the total fluoride emission limits for superphosphoric process lines; revised the compliance date for the monitoring requirements for low-energy absorbers; clarified the blower design capacity option; and added the regression model option to the monitoring requirements for low-energy absorbers (40 CFR Part 63, Subparts AA and BB). The November 19, 2020, amendments revised Appendix A of 40 CFR Part 63, Subpart BB, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.340, Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC)

The commission proposes to amend §113.340 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CC, since this section was last amended. During this period, the EPA amended Subpart CC on November 26, 2018 (83 FR 60696), February 4, 2020 (85 FR 6064), and November 19, 2020 (85 FR 73854). The November 26, 2018, amendments revised NESHAP Refinery MACT 1 (40 CFR Part 63, Subpart CC), MACT 2 (40 CFR Part 63, Subpart UUU), and New Source Performance Standards (NSPS) for Petroleum Refineries to clarify the requirements of these rules and to make technical corrections and minor revisions to requirements for work practice standards, record-keeping, and reporting. Also, the amendments revised the compliance date of the requirements for existing maintenance vents. The February 4, 2020, amendments reconsidered the December 1, 2015, Petroleum Refinery Sector RTR and NSPS. The amendments clarified a compliance issue and corrected errors published on November 26, 2018. Specifically, amendments revised 40 CFR §63.640(p)(2) and §63.648 regarding equipment leaks; 40 CFR §63.641 definition for "reference control technology for storage vessels"; 40 CFR §63.643(c)(1)(v) regarding miscellaneous process vents; 40 CFR §63.655 regarding reporting and recordkeeping; 40 CFR §63.660(i)(2)(iii) regarding storage vessels; and 40 CFR §63.670(d)(2) regarding flare control devices. The November 19, 2020, amendments revised Appendix of 40 CFR Part 63, Subpart CC, Table 1, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising 40 CFR §63.9(j) regarding the provision for notification requirements to a change in information already provided, limited to a change to major source status; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.350, Off-Site Waste and Recovery Operations (40 Code of Federal Regulations Part 63, Subpart DD)

The commission proposes to amend §113.350 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DD, since this section was last amended. During this period, the EPA amended Subpart DD on January 29, 2018 (83 FR 3986) and November 19, 2020 (85 FR 73854). The January 29, 2018, amendments finalized the NESHAP for Off-Site Waste and Recovery Operations (OSWRO). The amendments removed the additional monitoring requirements for pressure relief devices (PRD) on containers that resulted from the RTR 2015 amendments because EPA's reconsideration determined that the additional monitoring requirements are not necessary. The PRD inspection and monitoring requirements already included in the OSWRO NESHAP are effective and sufficient. The November 19, 2020, amendments to 40 CFR §63.697(a)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 2 of 40 CFR Part 63, Subpart DD, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising 40 CFR §63.9(j) regarding the provision for notification requirements to a change in information already provided, limited to a change to major source status; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.360, Magnetic Tape Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart EE)

The commission proposes to amend §113.360 by incorporating by reference all amendments to 40 CFR Part 63, Subpart EE, since this section was last amended. During this period, the EPA amended Subpart EE on November 19, 2020 (85 FR 73854) and December 28, 2020 (85 FR 84261). The November 19, 2020, amendments to Table 1 of 40 CFR Part 63, Subpart EE, revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 1 entry for 40 CFR §63.9(b)(2), which further explains initial notification. Additionally, the amendments revised Table 1 by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The December 28, 2020, amendments corrected a final rule that appeared in the *Federal Register* on November 19, 2020. Specifically, the November 19, 2020, rule instruction 37 included an amendment to Table 1 of 40 CFR Part 63, Subpart EE, to revise 40 CFR §63.9(b)(2); however, there is no such entry in Table 1. Therefore, the December 28, 2020, rule instruction 37 was corrected by removing the amendatory text and the entry for 40 CFR §63.9(b)(2) from Table 1.

§113.380, Aerospace Manufacturing and Rework Facilities (40 Code of Federal Regulations Part 63, Subpart GG)

The commission proposes to amend §113.380 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GG, since this section was last amended. During this period, the EPA amended Subpart GG on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 to 40 CFR Part 63, Subpart GG, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.390, Oil and Natural Gas Production Facilities (40 Code of Federal Regulations Part 63, Subpart HH)

The commission proposes to amend §113.390 by incorporating by reference all amendments to 40 CFR Part 63, Subpart HH, since this section was last amended. During this period, the EPA amended Subpart HH on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments removed the date limitation after which a major source cannot become an area source at 40 CFR §63.760(a)(1); revised 40 CFR §63.775(c)(1) so the initial notification requirements are no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements; and amended Appendix of 40 CFR Part 63, Subpart HH, Table 2, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.400, Shipbuilding and Ship Repair (Surface Coating) (40 Code of Federal Regulations Part 63, Subpart II)

The commission proposes to amend §113.400 by incorporating by reference all amendments to 40 CFR Part 63, Subpart II, since this section was last amended. During this period, the EPA amended Subpart II on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 to 40 CFR Part 63, Subpart II, by removing 40 CFR §63.9(i)-(j) and adding

40 CFR §63.9(i)-(k); and limiting 40 CFR §63.9(k) to 40 CFR §63.9(j) specifications.

§113.410, Wood Furniture Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart JJ)

The commission proposes to amend §113.410 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJ, since this section was last amended. During this period, the EPA amended Subpart JJ on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart JJ, by revising the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Specifically, the amendments revised Table 1 by amending 40 CFR §63.9(b) to require existing sources to submit initial notification report within 270 days of the effective date or no later than 120 days after the source becomes subject to this subpart, whichever is later; adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.420, Printing and Publishing (40 Code of Federal Regulations Part 63, Subpart KK)

The commission proposes to amend §113.420 by incorporating by reference all amendments to 40 CFR Part 63, Subpart KK, since this section was last amended. During this period, the EPA amended Subpart KK on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.830(b)(1)(i) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 1 of 40 CFR Part 63, Subpart KK, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

The commission also proposes to amend the title and rule reference in §113.420 to "Printing and Publishing Industry (40 Code of Federal Regulations Part 63, Subpart KK)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart KK.

§113.430, Primary Aluminum Reduction Plants (40 Code of Federal Regulations Part 63, Subpart LL)

The commission proposes to amend §113.430 by incorporating by reference all amendments to 40 CFR Part 63, Subpart LL, since this section was last amended. During this period, the EPA amended Subpart LL on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Appendix A of 40 CFR Part 63, Subpart LL, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.440, Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 Code of Federal Regulations Part 63, Subpart MM)

The commission proposes to amend §113.440 by incorporating by reference all amendments to 40 CFR Part 63, Subpart MM, since this section was last amended. During this period, the EPA amended Subpart MM on October 11, 2017 (82 FR 47328), November 5, 2020 (85 FR 70487), and November 19,

2020 (85 FR 73854). The October 11, 2017, amendments completed the RTR for the chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills regulated under the NESHAP. The amendments are based on developments in practices, processes, and control technologies identified as part of the technology review. The amendments included revisions to the opacity monitoring provisions; the addition of requirements to maintain proper operation of the electrostatic precipitator automatic voltage control required facilities to conduct five-year periodic emissions testing and submit electronic reports; the elimination the SSM exemptions; and technical and editorial changes. The November 5, 2020, amendments clarified how to set operating limits for smelt dissolving tank scrubbers used at these mills and corrected cross-reference errors. In 40 CFR §63.861, Definitions, the amendments revised the term "modification" and added the term "no-load fan amperage." The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart MM, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.500, Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 Code of Federal Regulations Part 63, Subpart SS)

The commission proposes to amend §113.500 by incorporating by reference all amendments to 40 CFR Part 63, Subpart SS, since this section was last amended. During this period, the EPA amended Subpart SS on July 6, 2020 (85 FR 40386). The July 6, 2020, amendments finalized the RTR. The amendments corrected and clarified regulatory provisions related to emissions during periods of SSM, including removing general exemptions for SSM; clarified vent control bypasses; revised requirements for heat exchange systems; added monitoring and operational requirements for flares; added provision for electronic reporting of performance test results and other reports; and included other technical corrections to improve consistency and clarity. These amendments reduced HAP emissions from this source category and reduced excess emissions of HAP from flares.

§113.510, Equipment Leaks - Control Level 1 (40 CFR 63, Subpart TT)

The commission proposes to amend the title of §113.510 to "Equipment Leaks - Control Level 1 (40 Code of Federal Regulations Part 63, Subpart TT)" to maintain consistency with other sections in this subchapter, by using the full term "Code of Federal Regulations" rather than the acronym "CFR."

§113.520, Equipment Leaks - Control Level 2 (40 CFR 63, Subpart UU)

The commission proposes to amend the title of §113.520 to "Equipment Leaks - Control Level 2 (40 Code of Federal Regulations Part 63, Subpart UU)" to maintain consistency with other sections in this subchapter, by using the full term "Code of Federal Regulations" rather than the acronym "CFR."

§113.540, Storage Vessels (Tanks) - Control Level 2 (40 CFR 63, Subpart WW)

The commission proposes to amend the title of §113.540 to "Storage Vessels (Tanks) - Control Level 2 (40 Code of Federal Regulations Part 63, Subpart WW)" to maintain consistency with other sections in this subchapter, by using the full term "Code of Federal Regulations" rather than the acronym "CFR."

§113.550, Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (40 Code of Federal Regulations Part 63, Subpart XX)

The commission proposes to amend §113.550 by incorporating by reference all amendments to 40 CFR Part 63, Subpart XX, since this section was last amended. During this period, the EPA amended Subpart XX on July 6, 2020 (85 FR 40386). The July 6, 2020, amendments finalized the RTR. The amendments corrected and clarified regulatory provisions related to emissions during periods of SSM, including removing general exemptions for SSM, and clarified vent control bypasses; revised requirements for heat exchange systems; added monitoring and operational requirements for flares; added provision for electronic reporting of performance test results and other reports; and included other technical corrections to improve consistency and clarity. These amendments reduced HAP emissions from this source category by 29 tpy and reduced excess emissions of HAP from flares by an additional 1,430 tpy.

§113.560, Generic Maximum Achievable Control Technology Standards (40 Code of Federal Regulations Part 63, Subpart YY)

The commission proposes to amend §113.560 by incorporating by reference all amendments to 40 CFR Part 63, Subpart YY, since this section was last amended. During this period, the EPA amended Subpart YY on July 6, 2020 (85 FR 40386), November 19, 2020 (85 FR 73854), and November 19, 2021 (86 FR 66096). The July 6, 2020, amendments finalized the EPA's RTR conducted for the Ethylene Production source category. The amendments corrected and clarified regulatory provisions related to emissions during periods of SSM, including removing general exemptions for SSM and clarified vent control bypasses; revised requirements for heat exchange systems; added monitoring and operational requirements for flares; added provision for electronic reporting of performance test results and other reports; and included other technical corrections to improve consistency and clarity. These amendments reduced HAP emissions from this source category and reduced excess emissions of HAP from flares. The November 19, 2020, amendments revised 40 CFR §63.1100(b), Applicability, to owners or operators, including sources that reclassify from major source to area source status. The November 19, 2021, amendments finalized the EPA's RTR conducted for the Carbon Black Production and Cyanide Chemicals Manufacturing major source categories regulated under NESHAP. New emissions standards for the were added. The EPA also finalized amendments for both source categories that removed the SSM exemptions; and required electronic reporting of certain notifications, performance test results, and semiannual reports.

The commission also proposes to amend the title and rule reference in §113.560 to "Source Categories: Generic Maximum Achievable Control Technology Standards (40 Code of Federal Regulations Part 63, Subpart YY)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart YY.

§113.600, Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 Code of Federal Regulations Part 63, Subpart CCC)

The commission proposes to amend §113.600 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCC, since this section was last amended. During this period, the EPA amended Subpart CCC on November 19, 2020 (85

FR 73854). The November 19, 2020, amendments to 40 CFR §63.1163(a)(3) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 1 of 40 CFR Part 63, Subpart CCC, by adding 40 CFR §63.9(j) regarding the provision for notification requirements to a change in information already provided, limited to a change to major source status; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.610, Mineral Wool Production (40 Code of Federal Regulations Part 63, Subpart DDD)

The commission proposes to amend §113.610 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDD, since this section was last amended. During this period, the EPA amended Subpart DDD on November 19, 2020 (85 FR 73854) and December 28, 2020 (85 FR 84261). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart DDD, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The December 28, 2020, amendments corrected the final rule that appeared in the *Federal Register* on November 19, 2020. The EPA finalized the amendments to the General Provisions that apply to NESHAP. This action corrected inadvertent typographical errors and redundant text. The corrections did not affect the substantive requirements of the final rule implementing the plain language reading of the "major source" and "area source" definitions of FCAA, §112. Specifically, the final MM2A rule instruction 51 amended Table 1 of 40 CFR Part 63, Subpart DDD, by adding 40 CFR §63.1(c)(6); however, this addition was unnecessary as Table 1 has another entry including that provision. Rule instruction 51 was corrected by adding 40 CFR §63.9(k) and removing 40 CFR §63.1(c)(6). Further, the entry for 40 CFR §63.1(c)(6) was removed from Table 1.

§113.620, Hazardous Waste Combustors (40 Code of Federal Regulations Part 63, Subpart EEE)

The commission proposes to amend §113.620 by incorporating by reference all amendments to 40 CFR Part 63, Subpart EEE, since this section was last amended. During this period, the EPA amended Subpart EEE on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart EEE, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The commission also proposes a minor editorial revision to §113.620 to correct existing rule text by making "Combustor" plural.

§113.640, Pharmaceuticals Production (40 Code of Federal Regulations Part 63, Subpart GGG)

The commission proposes to amend §113.640 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GGG, since this section was last amended. During this period, the EPA amended Subpart GGG on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart GGG, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising 40 CFR §63.9(j) regarding the provision for change in information provided, limited for change in major source status only; and adding 40 CFR §63.9(k) regarding the

provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.650, Natural Gas Transmission and Storage Facilities (40 Code of Federal Regulations Part 63, Subpart HHH)

The commission proposes to amend §113.650 by incorporating by reference all amendments to 40 CFR Part 63, Subpart HHH, since this section was last amended. During this period, the EPA amended Subpart HHH on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments removed the date limitation after which a major source cannot become an area source at 40 CFR Part 63, Subpart HHH, §63.1270(a) and revised the initial notification requirements in 40 CFR §63.1270(a) so the notification is submitted no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Appendix of 40 CFR Part 63, Subpart HHH, Table 2, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.660, Flexible Polyurethane Foam Production (40 Code of Federal Regulations Part 63, Subpart III)

The commission proposes to amend §113.660 by incorporating by reference all amendments to 40 CFR Part 63, Subpart III, since this section was last amended. During this period, the EPA amended Subpart III on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart III, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.670, Group IV Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart JJJ)

The commission proposes to amend §113.670 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJJ, since this section was last amended. During this period, the EPA amended Subpart JJJ on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart JJJ, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising 40 CFR §63.9(j) regarding the provision for change in information provided, limited for change in major source status only; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.690, Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL)

The commission proposes to amend §113.690 by incorporating by reference all amendments to 40 CFR Part 63, Subpart LLL, since this section was last amended. During this period, the EPA amended Subpart LLL on June 23, 2017 (82 FR 28562), August 22, 2017 (82 FR 39671), July 25, 2018 (83 FR 35122), August 3, 2018 (83 FR 38033), October 7, 2020 (85 FR 63394), and November 19, 2020 (85 FR 73854). The June 23, 2017, amendment provided a compliance alternative for sources that would otherwise be required to use a hydrogen chloride (HCl) continuous emissions monitoring systems (CEMS) to demonstrate compliance with the HCl emissions limit. This compliance alternative was needed due to the unavailability of the HCl calibration gases used for CEMS quality assurance purposes. The August 22, 2017, amendments removed the provisions that were added in

the June 23, 2017, direct final rule, and restored the provisions that were deleted in that rule. The July 25, 2018, amendments finalized the RTR. The amendments corrected and clarified other rule requirements and provisions. The August 3, 2020, amendments corrected the to the July 25, 2018, publication of the RTR. Specifically, the Table 1 "Requirement" column was corrected to "Due Dates for Excess Emissions and CMS Performance Reports" and the "Applies to Subpart LLL" column to "No." The October 7, 2020, amendments corrected and updated regulations for source testing of emissions. These revisions included corrections to inaccurate testing provisions, updated outdated procedures, and approved alternative procedures that provided flexibility to testers. These revisions improved the quality of data and did not impose any new substantive requirements on source owners or operators. Specifically, 40 CFR Part 63, Subpart LLL, Portland Cement Manufacturing, the units of measurement in Equations 12, 13, 17, 18, and 19 were revised to add clarity and consistency. Equations 12 and 13 were corrected so that the operating limit units of measurement was calculated correctly. The calculation of the operating limit was established by a relationship of the total hydrocarbons (THC) CEMS signal to the organic HAP compliance concentration. In Table 1 of 40 CFR Part 63, Subpart LLL, the THC and organic HAP emissions limits units were in parts per million (by) volume, dry (ppmvd) corrected to 7% oxygen. Therefore, the average organic HAP values in equation 12 needed to be in ppmvd, corrected to 7% oxygen, instead of parts per million by volume-wet (ppmvw). The THC CEMS monitor units of measure are ppmvw, as propane and the variables are updated to reflect this. The variables in Equations 13 and 19 reference variables in Equations 12 and 18, respectively. Those variables are updated for consistency between the equations. The units of measurement in Equation 17 should be the monitoring system's units of measure. It is possible for those systems to be on either a wet or a dry basis. The equation was only on a wet basis, even though it should be on the basis of the monitor (wet or dry). The changes to the units of measure from ppmvw to parts per million by volume (ppmv) takes either possibility into account. For Equations 17 and 18, the operating limit units of measure were changed to the units of the CEMS monitor, ppmv. The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart LLL, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.700, Pesticide Active Ingredient Production (40 Code of Federal Regulations Part 63, Subpart MMM)

The commission proposes to amend §113.700 by incorporating by reference all amendments to 40 CFR Part 63, Subpart MMM, since this section was last amended. During this period, the EPA amended Subpart MMM on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart MMM, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising 40 CFR §63.9(j) change in information provided, limited for change in major source status only, 40 CFR §63.1368(h) specifies procedures for other notification of changes; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.710, Wool Fiberglass Manufacturing (40 Code of Federal Regulations Part 63, Subpart NNN)

The commission proposes to amend §113.710 by incorporating by reference all amendments to 40 CFR Part 63, Subpart NNN, since this section was last amended. During this period, the EPA amended Subpart NNN on December 26, 2017 (82 FR 60873), November 19, 2020 (85 FR 73854), and December 28, 2020 (85 FR 84261). The December 26, 2017, amendments finalized the EPA's RTR conducted for the Wool Fiberglass Manufacturing source category. The amendments to Subpart NNN included RTR readopting the existing emission limits for formaldehyde; establishing emission limits for methanol; adding a work practice standard for phenol emissions from bonded rotary spin lines at wool fiberglass manufacturing facilities; revising emission standards promulgated on July 29, 2015, for flame attenuation (FA) lines at wool fiberglass manufacturing facilities by creating three subcategories of FA lines; and establishing emission limits for formaldehyde and methanol emissions; and either emission limits or work practice standards for phenol emissions for each subcategory of FA lines. The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart NNN, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The December 28, 2020, amendments corrected redundant text that appeared in the *Federal Register* at 85 FR 73854 on November 19, 2020. Specifically, the amendments revised Table 1 of 40 CFR Part 63, Subpart NNN, by correcting rule instruction 60 to remove the addition of 40 CFR §63.1(c)(6) because it was unnecessary as Table 1 had another entry including that provision.

§113.720, Manufacture of Amino/Phenolic Resins (40 Code of Federal Regulations Part 63, Subpart OOO)

The commission proposes to amend §113.720 by incorporating by reference all amendments to 40 CFR Part 63, Subpart OOO, since this section was last amended. During this period, the EPA amended Subpart OOO on October 15, 2018 (83 FR 51842) and November 19, 2020 (85 FR 73854). The October 15, 2018, amendments reconsidered the EPA's October 8, 2014, RTRs conducted for the Acrylic and Modacrylic Fibers Production, Amino/Phenolic Resins (APR) Production and Polycarbonate Production source categories. The amendments revised the MACT standard for continuous process vents (CPV) at existing affected sources; extended the compliance date for CPV at existing sources; revised the requirements for storage vessels at new and existing sources during periods when an emission control system used to control vents on fixed roof storage vessels is undergoing planned routine maintenance; and included five minor technical rule corrections to improve the clarity of the APR NESHAP. The amendments did not reopen any other aspects of the October 2014 final amendments to the NESHAP for the Manufacture of APR, including other issues raised in petitions for reconsideration of the October 2014 rule. The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart OOO, by adding §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising §63.9(j) regarding the provision for a change in information provided, limited for change in major source status only; and adding §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.730, Polyether Polyols Production (40 Code of Federal Regulations Part 63, Subpart PPP)

The commission proposes to amend §113.730 by incorporating by reference all amendments to 40 CFR Part 63, Subpart PPP,

since this section was last amended. During this period, the EPA amended Subpart PPP on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.1434(d) and (e), and §63.1439(e)(3)(ii)(B) and (C) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also clarified the 40 CFR §63.1439(e) recordkeeping and reporting requirements that apply to sources choosing to reclassify to area source status and to sources that revert back to major source status, including a requirement for electronic notification. Further, the amendments revised Table 1 of 40 CFR Part 63, Subpart PPP, by adding §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; revising §63.9(j) regarding the provision for a change in information provided, limited for change in major source status only; and adding §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.740, Primary Copper Smelting (40 Code of Federal Regulations Part 63, Subpart QQQ)

The commission proposes to amend §113.740 by incorporating by reference all amendments to 40 CFR Part 63, Subpart QQQ, since this section was last amended. During this period, the EPA amended Subpart QQQ on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments removed the date limitation after which a major source cannot become an area source from 40 CFR §63.1441; and revised the initial notification requirements in 40 CFR §63.1454(b) so the notification shall be submitted no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.750, Secondary Aluminum Production (40 Code of Federal Regulations Part 63, Subpart RRR)

The commission proposes to amend §113.750 by incorporating by reference all amendments to 40 CFR Part 63, Subpart RRR, since this section was last amended. During this period, the EPA amended Subpart RRR on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Appendix A of 40 CFR Part 63, Subpart RRR, by adding 40 CFR §63.1(c)(6), regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.770, Primary Lead Processing (40 Code of Federal Regulations Part 63, Subpart TTT)

The commission proposes to amend §113.770 by incorporating by reference all amendments to 40 CFR Part 63, Subpart TTT, since this section was last amended. During this period, the EPA amended Subpart TTT on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart TTT, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

The commission also proposes to amend the title and rule reference in §113.770 to "Primary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart TTT)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart TTT.

§113.780, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 Code of Federal Regulations Part 63, Subpart UUU)

The commission proposes to amend §113.780 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUU, since this section was last amended. During this period, the EPA amended Subpart UUU on November 26, 2018 (83 FR 60696), February 4, 2020 (85 FR 6064), and November 19, 2020 (85 FR 73854). The November 26, 2018, amendments revised MACT 2 (Subpart UUU) and NSPS for Petroleum Refineries to clarify the requirements of these rules and to make technical corrections and minor revisions to requirements for work practice standards, recordkeeping, and reporting. Also, the amendments revised the compliance date of the requirements for existing maintenance vents from August 1, 2017 to December 26, 2018. The February 4, 2020, amendments reconsidered the EPA's December 1, 2015 RTR and NSPS. Also, the amendments clarified a compliance issue raised by stakeholders subject to the rule, corrected referencing errors, and corrected publication errors associated with amendments to the final rule which were published on November 26, 2018. The November 19, 2020, amendments to 40 CFR §63.1574(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 44 of 40 CFR Part 63, Subpart UUU, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.790, Publicly Owned Treatment Works (40 Code of Federal Regulations Part 63, Subpart VVV)

The commission proposes to amend §113.790 by incorporating by reference all amendments to 40 CFR Part 63, Subpart VVV, since this section was last amended. During this period, the EPA amended Subpart VVV on October 26, 2017 (82 FR 49513) and November 19, 2020 (85 FR 73854). The October 26, 2017, amendments finalized the EPA's RTR. The amendments included revisions to names and definitions of the subcategories; the applicability criteria; regulatory provisions pertaining to emissions during periods of SSM, including removing general exemptions for SSM; initial notification requirements for existing Groups 1 and 2 Publicly Owned Treatment Works (POTW); requirements for new Group 1 POTW; requirements for electronic reporting; and other miscellaneous edits and technical corrections. The November 19, 2020, amendments to 40 CFR §63.1591(a)(1) and (2) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 1 of 40 CFR Part 63, Subpart VVV, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.810, Ferroalloys Production: Ferromanganese and Silicomanganese (40 Code of Federal Regulations Part 63, Subpart XXX)

The commission proposes to amend §113.810 by incorporating by reference all amendments to 40 CFR Part 63, Subpart XXX, since this section was last amended. During this period, the EPA amended Subpart XXX on January 18, 2017 (82 FR 5401) and November 19, 2020 (85 FR 73854). The January 18, 2017, amendments reconsidered the EPA's June 30, 2015 RTR. The amendments revised the rule to allow existing facilities with positive pressure baghouses to perform visible emissions (VE) monitoring twice daily as an alternative to installing and operating

bag leak detection systems to ensure the baghouses are operating properly. The amendments maintained the requirement that facilities must use a digital camera opacity technique (DCOT) method to demonstrate compliance with opacity limits; however, the revised rule references the recently updated version of the DCOT method. The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart XXX, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.840, Municipal Solid Waste Landfills (40 Code of Federal Regulations Part 63, Subpart AAAA)

The commission proposes to amend §113.840 by incorporating by reference all amendments to 40 CFR Part 63, Subpart AAAA, since this section was last amended. During this period, the EPA amended Subpart AAAA on March 26, 2020 (85 FR 17244), October 13, 2020 (85 FR 64398), and February 14, 2022 (87 FR 8197). The March 26, 2020, amendments finalized EPA's RTR. The amendments corrected and clarified SSM by removing general exemptions; revised wellhead operational standards and corrective action to improve effectiveness and provide compliance flexibility; reorganized rule text to incorporate provisions from the NSPS within this subpart; and added requirements for electronic reporting of performance test results. The amendments also included minor changes to the Municipal Solid Waste (MSW) Landfills NSPS and Emission Guidelines and Compliance Times for MSW Landfills. Specifically, the amendments included the most recent MSW Landfills NSPS and emission guidelines that would allow affected sources to demonstrate compliance with landfill gas control, operating, monitoring, recordkeeping, and reporting requirements by following the corresponding requirements in the MSW Landfills NESHAP. The October 13, 2020, amendments corrected the March 26, 2020 RTR by revising inadvertent errors in the cross-referencing and formatting in the FR; and clarifying the two operational and reporting requirements. The February 14, 2022, amendments finalized EPA's technical revisions and clarifications for the NESHAP for MSW Landfills established in the March 26, 2020, final rule. The EPA clarified the following: Wellhead monitoring requirements for the purpose of identifying excess air infiltration; delegation of authority to state, local, or tribal agencies for "emission standards;" applicability of the General Provisions to affected MSW landfills; and handling of monitoring data for combustion devices during periods of monitoring system breakdowns, repairs, calibration checks, and adjustments. The EPA also made some minor typographical corrections.

§113.860, Manufacturing of Nutritional Yeast (40 Code of Federal Regulations Part 63, Subpart CCCC)

The commission proposes to amend §113.860 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCCC, since this section was last amended. During this period, the EPA amended Subpart CCCC on October 16, 2017 (82 FR 48156). The October 16, 2017, amendments finalized EPA's RTR. The amendments revised the form of the volatile organic compounds standards for fermenters; removed the option to monitor brew ethanol; added ongoing relative accuracy test audit (RATA); and revised other monitoring, reporting, and recordkeeping requirements.

§113.870, Plywood and Composite Wood Products (40 Code of Federal Regulations Part 63, Subpart DDDD)

The commission proposes to amend §113.870 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDDD,

since this section was last amended. During this period, the EPA amended Subpart DDDD on August 13, 2020 (85 FR 49434), August 21, 2020 (85 FR 51668), and November 19, 2020 (85 FR 73854). The August 13, 2020, amendments finalized EPA's RTR. The amendments eliminated the SSM exemptions in the General Provisions for the NESHAP; added electronic reporting; added repeat emissions testing; and made technical and editorial changes. No revisions to the numerical emission limits in the rule based on the RTR. The August 21, 2020, amendments corrected the August 13, 2020 RTR by revising the date in 40 CFR §63.2282. The November 19, 2020, amendments to 40 CFR §63.2280(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 10 of 40 CFR Part 63, Subpart DDDD, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.880, Organic Liquids Distribution (Non-Gasoline) (40 Code of Federal Regulations Part 63, Subpart EEEE)

The commission proposes to amend §113.880 by incorporating by reference all amendments to 40 CFR Part 63, Subpart EEEE, since this section was last amended. During this period, the EPA amended Subpart EEEE on July 7, 2020 (85 FR 40740), July 10, 2020 (85 FR 41411), July 22, 2020 (85 FR 44216), and November 19, 2020 (85 FR 73854). The July 7, 2020, amendments finalized EPA's RTR. The amendments revised the storage tank requirements; corrected and clarified regulatory provisions related to emissions during periods of SSM by removing general exemptions; added requirements for electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports; added operational requirements for flares; and made other minor technical improvements. The July 10, 2020, amendments corrected the July 7, 2020 RTR by revising amendatory instruction 2d for 40 CFR §63.14 to reference the correct redesigning paragraphs and correct the 40 CFR §63.14 heading. The July 22, 2020, amendments corrected the July 7, 2020 RTR. A set of amendatory instructions and one reference to a standard approved for IBR were removed during the review and publication process, but the related standard reference was not removed. In addition, subsequent amendatory instructions were not properly revised to reflect the edits. Specifically, these amendments corrected the centralized IBR section at 40 CFR §63.14 by restating the instruction that could not be applied to the CFR; and removing ASTM D6378-18a from 40 CFR §63.2046. The November 19, 2020, amendments to 40 CFR §63.2382(b)(1) and (2) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 12 of 40 CFR Part 63, Subpart EEEE, by revising 40 CFR §63.9(j) regarding the provision for a change in previous information to require submission within 15 days after the change and limiting applicability to a change to major source status, other changes are reported in the first and subsequent compliance reports; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to notification specified in 40 CFR §63.9(j).

§113.890, Miscellaneous Organic Chemical Manufacturing (40 Code of Federal Regulations Part 63, Subpart FFFF)

The commission proposes to amend §113.890 by incorporating by reference all amendments to 40 CFR Part 63, Subpart FFFF,

since this section was last amended. During this period, the EPA amended Subpart FFFF on August 12, 2020 (85 FR 49084) and November 19, 2020 (85 FR 73854). The August 12, 2020, amendments finalized EPA's RTR. The amendments established emission limits and work practice standards for new and existing miscellaneous organic chemical (MON) manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment; and implemented FCAA, §112(d) by requiring all major sources to meet HAP emission standards to reflect application of the MACT. The HAP emitted from MON manufacturing facilities included toluene, methanol, xylene, hydrogen chloride, and methylene chloride. The final rule reduced HAP emissions by 16,800 tpy for existing facilities that manufacture MONs, including amendments for equipment leaks and heat exchange systems, and addressed ethylene oxide emissions from storage tanks, process vents, and equipment leaks; corrected and clarified regulatory provisions related to emissions during periods of SSM, including removing general exemptions for periods of SSM, adding work practice standards for periods of SSM where appropriate, and clarifying regulatory provisions for certain vent control bypasses; added monitoring and operational requirements for flares that control ethylene oxide emissions and flares used to control emissions from processes that produce olefins and polyolefins; added a provision for electronic reporting of performance test results and other reports; and included other technical corrections to improve consistency and clarity. The November 19, 2020, amendments to 40 CFR §63.2515(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 12 of 40 CFR Part 63, Subpart FFFF, by revising 40 CFR §63.9(j) regarding change in previous information, limited to a change in major source status, otherwise §63.2520(e) specifies reporting requirements for process changes; and adding 40 CFR §63.9(k) regarding electronic reporting procedures, limited to 40 CFR §63.9(j) specifications.

§113.900, Solvent Extraction for Vegetable Oil Production (40 Code of Federal Regulations Part 63, Subpart GGGG)

The commission proposes to amend §113.900 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GGGG, since this section was last amended. During this period, the EPA amended Subpart GGGG on March 18, 2020 (85 FR 15608) and November 19, 2020 (85 FR 73854). The March 18, 2020, amendments finalized the RTR for the Solvent Extraction for Vegetable Oil Production source category. The EPA finalized the decision that risks due to emissions of air toxics from this source category are acceptable and that the current NESHAP provides an ample margin of safety to protect public health. Under the technology review, the EPA finalized the decision that there are no developments in practices, processes, or control technologies that necessitate revision of the standards. No revisions to the numerical emission limits based on the risk and technology reviews were made. The amendments included corrections and clarifications for regulatory provisions related to emissions during periods of SSM, including removing general exemptions for periods of SSM. The amendments also added alternative work practice standards for periods of initial startup for new or significantly modified sources; and made other minor clarifications and corrections. Further, the amendments added a provision for electronic reporting of certain notifications and reports and performance test results; and made other minor clarifications and corrections to improve compliance and implemen-

tation of the rule. The November 19, 2020, amendments to 40 CFR §63.2860(a) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 1 of 40 CFR Part 63, §63.2870, by adding 40 CFR §63.9(j) regarding a provision for notification requirements for a change in previous information; and 40 CFR §63.9(k) regarding the provision for notification requirements for electronic reporting procedures, limited to 40 CFR §63.9(j) specifications.

§113.910, Wet-Formed Fiberglass Mat Production (40 Code of Federal Regulations Part 63, Subpart HHHH)

The commission proposes to amend §113.910 by incorporating by reference all amendments to 40 CFR Part 63, Subpart HHHH, since this section was last amended. During this period, the EPA amended Subpart HHHH on February 28, 2019 (84 FR 6676) and November 19, 2020 (85 FR 73854). The February 28, 2019, amendments finalized the EPA's RTR. The amendments removed SSM general exemptions; added electronic reporting; clarified rule provisions; revised certain monitoring, recordkeeping, and reporting requirements; and included other miscellaneous technical and editorial changes. The November 19, 2020, amendments revised Table 2 of 40 CFR Part 63, Subpart HHHH, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.920, Surface Coating of Automobiles and Light-Duty Trucks (40 Code of Federal Regulations Part 63, Subpart IIII)

The commission proposes to amend §113.920 by incorporating by reference all amendments to 40 CFR Part 63, Subpart IIII, since this section was last amended. During this period, the EPA amended Subpart IIII on July 8, 2020 (85 FR 41100), November 19, 2020 (85 FR 73854), and November 19, 2021 (86 FR 66038). The July 8, 2020, amendments finalized the EPA's RTR of Surface Coatings of (1) Automobiles and Light-Duty Trucks (ALDT), (2) Miscellaneous Metal Parts and Products (MMPP), and (3) Plastic Parts and Products (PPP) source categories regulated under NESHAP. The amendments removed SSM general exemptions; revised electronic reporting of performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Several miscellaneous technical amendments were also made to improve the clarity of the rule requirements. This notice also finalized technical corrections to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture. The November 19, 2020, amendments to 40 CFR §63.3110(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 2 of 40 CFR Part 63, Subpart IIII, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The November 19, 2021, amendments made technical corrections to regulations under the NESHAP program. Specifically, the amendments included the Surface Coating of Automobiles and Light-Duty Trucks promulgated on July 8, 2020. The amendments to 40 CFR §63.3130(c)(4) and (5) revised the records to keep relating to the record of the calculation of the organic HAP emission rate. The amendments

to 40 CFR §63.3161 revised the demonstration of initial compliance relating to emission limits and determining the transfer efficiency for each coating. The amendments also revised 40 CFR §63.3165(e) relating to determining the emission capture system efficiency with panel testing. Further, amendments to Appendix A of 40 CFR Part 63, Subpart IIII, revised the text relating to protocol for determining the daily volatile organic compound emission rate.

§113.930, Paper and Other Web Coating (40 Code of Federal Regulations Part 63, Subpart JJJJ)

The commission proposes to amend §113.930 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJJJ, since this section was last amended. During this period, the EPA amended Subpart JJJJ on July 9, 2020 (85 FR 41276) and November 19, 2020 (85 FR 73854). The July 9, 2020, amendments finalized the EPA's RTR. The amendments added a compliance demonstration equation that accounts for retained volatiles in the coated web, repeat testing, and electronic reporting requirements; and made technical and editorial changes. The November 19, 2020, amendments to 40 CFR §63.3400(b)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 2 to Subpart JJJJ, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.940, Surface Coating of Metal Cans (40 Code of Federal Regulations Part 63, Subpart KKKK)

The commission proposes to amend §113.940 by incorporating by reference all amendments to 40 CFR Part 63, Subpart KKKK, since this section was last amended. During this period, the EPA amended Subpart KKKK on February 25, 2020 (85 FR 10828), November 19, 2020 (85 FR 73854), and November 19, 2021 (86 FR 66038). The February 25, 2020, amendments finalized the EPA's RTR. The amendments removed SSM general exemptions; revised electronic reporting of performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Additionally, several miscellaneous technical amendments were made to improve the clarity of the rule requirements. The November 19, 2020, amendments to 40 CFR §63.3510(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 5 of 40 CFR Part 63, Subpart KKKK, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The November 19, 2021, amendments, made technical corrections under the NESHAP program for Surface Coating of Metal Cans, promulgated on February 25, 2020. The amendments to 40 CFR §63.3541(h) revised the calculation for the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.

§113.960, Surface Coating of Miscellaneous Metal Parts and Products (40 Code of Federal Regulations Part 63, Subpart MMMM)

The commission proposes to amend §113.960 by incorporating by reference all amendments to 40 CFR Part 63, Subpart MMMM, since this section was last amended. During this period, the EPA amended Subpart MMMM on July 8, 2020 (85 FR 41100) and November 19, 2020 (85 FR 73854). The July 8, 2020, amendments finalized the EPA's RTR. The amendments eliminated the SSM general exemptions; revised electronic reporting of performance test results and compliance reports; added EPA Method 18; updated several measurement methods; added requirements for periodic performance testing; and made several miscellaneous technical amendments. The November 19, 2020, amendments to 40 CFR §63.3910(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 2 of 40 CFR Part 63, Subpart MMMM, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.970, Surface Coating of Large Appliances (40 Code of Federal Regulations Part 63, Subpart NNNN)

The commission proposes to amend §113.970 by incorporating by reference all amendments to 40 CFR Part 63, Subpart NNNN, since this section was last amended. During this period, the EPA amended Subpart NNNN on March 15, 2019 (84 FR 9590), July 8, 2020 (85 FR 41100), and November 19, 2020 (85 FR 73854). The March 15, 2019, amendments finalized the EPA's RTR. The amendments eliminated general exemptions for SSM; revised electronic reporting for performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Additionally, several miscellaneous technical amendments were made to improve the clarity of the rule requirements. No revisions to the numerical emission limits based on these risk analyses or technology reviews. The July 8, 2020, amendments corrected the RTR. The amendments eliminated the general exemptions for SSM; revised electronic reporting of performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Several miscellaneous technical amendments were also made to improve the clarity of the rule requirements. No revisions to the numerical emission limits based on these risk analyses or technology reviews. The amendments also finalized technical corrections to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture published in the March 15, 2019 FR. The November 19, 2020, amendments to 40 CFR §63.4110(a)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 2 of 40 CFR Part 63, Subpart NNNN, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.980, Printing, Coating, and Dyeing of Fabrics and Other Textiles (40 Code of Federal Regulations Part 63, Subpart OOOO)

The commission proposes to amend §113.980 by incorporating by reference all amendments to 40 CFR Part 63, Subpart

OOOO, since this section was last amended. During this period, the EPA amended Subpart OOOO on March 15, 2019 (84 FR 9590), July 8, 2020 (85 FR 41100), and November 19, 2020 (85 FR 73854). The March 15, 2019, amendments finalized the EPA's RTRs for the Surface Coating of Large Appliances; the Printing, Coating, and Dyeing of Fabrics and Other Textiles; and the Surface Coating of Metal Furniture source categories. The amendments eliminated the general exemptions for SSM; revised electronic reporting for performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Additionally, several miscellaneous technical amendments were made to improve the clarity of the rule requirements. No revisions to the numerical emission limits based on these risk analyses or technology reviews. The July 8, 2020, amendments corrected the RTR. The amendments eliminated the general exemptions for SSM; revised electronic reporting of performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Several miscellaneous technical amendments were also made to improve the clarity of the rule requirements. The November 19, 2020, amendments to 40 CFR §63.4310(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 3 of 40 CFR Part 63, Subpart OOOO, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.990, Surface Coating of Plastic Parts and Products (40 Code of Federal Regulations Part 63, Subpart PPPP)

The commission proposes to amend §113.990 by incorporating by reference all amendments to 40 CFR Part 63, Subpart PPPP, since this section was last amended. During this period, the EPA amended Subpart PPPP on July 8, 2020 (85 FR 41100) and November 19, 2020 (85 FR 73854). The July 8, 2020, amendments finalized the EPA's RTR. The amendments eliminated the general exemptions for SSM; revised electronic reporting of performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Several miscellaneous technical amendments were also made to improve the clarity of the rule requirements. No revisions to the numerical emission limits based on these risk analyses or technology reviews. This notice also finalized technical corrections to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture. The November 19, 2020, amendments to 40 CFR §63.4510(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 2 of 40 CFR Part 63, Subpart PPPP, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1000, Surface Coating of Wood Building Products (40 Code of Federal Regulations Part 63, Subpart QQQQ)

The commission proposes to amend §113.1000 by incorporating by reference all amendments to 40 CFR Part 63, Subpart QQQQ, since this section was last amended. During this period, the EPA amended Subpart QQQQ on March 4, 2019 (84 FR 7682) and November 19, 2020 (85 FR 73854). The March 4, 2019, amendments finalized the EPA's RTR. The amendments eliminated the general exemptions for SSM; revised electronic reporting, added an alternative compliance equation under the current standards; and made technical and editorial changes. This action also finalized a new EPA test method to measure isocyanate compounds in certain surface coatings. The November 19, 2020, amendments to 40 CFR §63.4710(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 4 of 40 CFR Part 63, Subpart QQQQ, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1010, Surface Coating of Metal Furniture (40 Code of Federal Regulations Part 63, Subpart RRRR)

The commission proposes to amend §113.1010 by incorporating by reference all amendments to 40 CFR Part 63, Subpart RRRR, since this section was last amended. During this period, the EPA amended Subpart RRRR on March 15, 2019 (84 FR 9590), July 8, 2020 (85 FR 41100), and November 19, 2020 (85 FR 73854). The March 15, 2019, amendments finalized the RTR. The amendments eliminated the general exemptions for SSM; revised electronic reporting for performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Additionally, several miscellaneous technical amendments were made to improve the clarity of the rule requirements. No revisions to the numerical emission limits based on these risk analyses or technology reviews. The July 8, 2020, amendments finalized the RTR. The amendments eliminated the general exemptions for SSM; revised electronic reporting of performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Several miscellaneous technical amendments were also made to improve the clarity of the rule requirements. No revisions to the numerical emission limits based on these risk analyses or technology reviews. The amendments finalized technical corrections to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture. The November 19, 2020, amendments to 40 CFR §63.4910(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, amendments revised Table 2 of 40 CFR Part 63, Subpart RRRR, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1020, Surface Coating of Metal Coil (40 CFR 63, Subpart SSSS)

The commission proposes to amend §113.1020 by incorporating by reference all amendments to 40 CFR Part 63, Subpart SSSS, since this section was last amended. During this period,

the EPA amended Subpart SSSS on February 25, 2020 (85 FR 10828) and November 19, 2020 (85 FR 73854). The February 25, 2020, amendments finalized the RTR. The amendments eliminated the general exemptions for SSM; revised electronic reporting of performance test results and compliance reports; added EPA Method 18; updated several measurement methods; and added requirements for periodic performance testing. Additionally, several miscellaneous technical amendments are being made to improve the clarity of the rule requirements. No revisions to the numerical emission limits for the two source categories based on the RTRs. The November 19, 2020, amendments to 40 CFR §63.5180(b)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 2 of 40 CFR Part 63, Subpart SSSS, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

The commission also proposes to amend the title of §113.1020 to "Surface Coating of Metal Coil (40 Code of Federal Regulations Part 63, Subpart SSSS)" to maintain consistency with other sections in this subchapter, by using the full term "Code of Federal Regulations" rather than the acronym "CFR."

§113.1030, Leather Finishing Operations (40 Code of Federal Regulations Part 63, Subpart TTTT)

The commission proposes to amend §113.1030 by incorporating by reference all amendments to 40 CFR Part 63, Subpart TTTT, since this section was last amended. During this period, the EPA amended Subpart TTTT on February 12, 2019 (84 FR 3308) and November 19, 2020 (85 FR 73854). The February 12, 2019, amendments finalized the RTR. The amendments eliminated the general exemptions for SSM; added electronic reporting; and revised certain rule provisions for clarification. The November 19, 2020, amendments to 40 CFR §63.5415(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 2 of 40 CFR Part 63, Subpart TTTT, by adding 40 CFR §63.9(j) regarding notification requirements for change in previous information; and 40 CFR §63.9(k) regarding notification requirements for electronic reporting procedures, limiting to 40 CFR §63.9(j) specifications.

§113.1040, Cellulose Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart UUUU)

The commission proposes to amend §113.1040 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUUU, since this section was last amended. During this period, the EPA amended Subpart UUUU on July 2, 2020 (85 FR 39980) and November 19, 2020 (85 FR 73854). The July 2, 2020, amendments finalized the EPA's RTR. The amendments: eliminated the general exemptions for SSM; added electronic reporting requirements; added provisions for periodic emissions performance testing for facilities using non-recovery control devices; added a provision allowing more flexibility for monitoring of biofilter control devices; and made technical and editorial changes. The November 19, 2020, amendments to Table 7 of 40 CFR Part 63, Subpart UUUU, revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments also revised Table 7 of 40 CFR Part 63, Subpart UUUU, by revising entry 4 regarding affected source before June 11, 2002 to require initial notifications no later than 120

days after June 11, 2002, or no later than 120 after the source becomes subject to this subpart, whichever is later, as specified in 40 CFR §63.9(b)(2). Also, the amendments revised Table 8 of 40 CFR Part 63, Subpart UUUU, by revising entry 7 to require submission a compliance report, which must contain any changes in information already provided, as specified in 40 CFR §63.9(j), except changes in major source status must be reported per §63.9(j). The amendments also revised Table 10 of 40 CFR Part 63 Subpart UUUU, by adding 40 CFR §63.9(j) regarding the provision for change in previous information, which must be submitted within 15 days of the change, except the notification of all but change in major source status must be submitted as part of the next semiannual compliance report as specified in Table 8 to this subpart; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1050, Boat Manufacturing (40 CFR 63, Subpart VVVV)

The commission proposes to amend §113.1050 by incorporating by reference all amendments to 40 CFR Part 63, Subpart VVVV, since this section was last amended. During this period, the EPA amended Subpart VVVV on March 20, 2020 (85 FR 15960), November 19, 2020 (85 FR 73854), and November 19, 2021 (86 FR 66038). The March 20, 2020, amendments finalized the RTR. The amendments eliminated general exemptions for SSM and revised provisions regarding electronic reporting of performance test, performance evaluation results, and semiannual reports. The numeric emission limits of the standards remains unchanged. The November 19, 2020, amendments revised Table 8 of 40 CFR Part 63, Subpart VVVV, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The November 19, 2021, amendments made technical corrections to regulations under the NESHAP program for Boat Manufacturing, promulgated on March 20, 2020. Specifically, Table 8 of 40 CFR Part 63, Subpart VVVV, was amended to remove the reclassification limitation, and to revise reporting and recordkeeping provisions.

The commission also proposes to amend the title of §113.1050 to "Boat Manufacturing (40 Code of Federal Regulations Part 63, Subpart VVVV)" to maintain consistency with other sections in this subchapter, by using the full term "Code of Federal Regulations" rather than the acronym "CFR."

§113.1060, Reinforced Plastic Composites Production (40 Code of Federal Regulations Part 63, Subpart WWWW)

The commission proposes to amend §113.1060 by incorporating by reference all amendments to 40 CFR Part 63, Subpart WWWW, since this section was last amended. During this period, the EPA amended Subpart WWWW on March 20, 2020 (85 FR 15960) and November 19, 2020 (85 FR 73854). The March 20, 2020, amendments finalized the RTR. The amendments addressed emissions during periods of SSM and amended provisions regarding electronic reporting of performance test, performance evaluation results, and semiannual reports. These final amendments included the removal of regulatory language that was inconsistent with the requirement that the standards apply at all times, inclusion of language requiring electronic reporting of performance test and performance evaluation results and semiannual reports, and an amendment to clarify that mixers that route to a capture and control device system with at least 95% efficiency overall are not required to have covers. The numeric emission limits of the standards remains unchanged. The

November 19, 2020, amendments removed the date limitation after which a major source cannot become an area source at Table 2 of 40 CFR Part 63, Subpart WWWW. The amendments also revised Table 15 of 40 CFR Part 63, to Subpart WWWW, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1070, Rubber Tire Manufacturing (40 Code of Federal Regulations Part 63, Subpart XXXX)

The commission proposes to amend §113.1070 by incorporating by reference all amendments to 40 CFR Part 63, Subpart XXXX, since this section was last amended. During this period, the EPA amended Subpart XXXX on July 24, 2020 (85 FR 44752) and November 19, 2020 (85 FR 73854). The July 24, 2020, amendments finalized the RTR. The amendments added electronic reporting of performance test results and reports, compliance reports, and NOCS reports; and removed the provision that exempts emissions from compliance with the standards during periods of SSM. The November 19, 2020, amendments to 40 CFR §63.6009(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, amendments revised Table 17 of 40 CFR Part 63, Subpart XXXX, by adding 40 CFR §63.9(k) regarding notification for electronic reporting procedures as specified in 40 CFR §63.9(j).

§113.1080, Stationary Combustion Turbines (40 Code of Federal Regulations Part 63, Subpart YYYY)

The commission proposes to amend §113.1080 by incorporating by reference all amendments to 40 CFR Part 63, Subpart YYYY, since this section was last amended. During this period, the EPA amended Subpart YYYY on March 9, 2020 (85 FR 13524), November 19, 2020 (85 FR 73854), and March 9, 2022 (87 FR 13183). The March 9, 2020, amendments finalized the RTR. The amendments eliminated the general exemptions for SSM and added electronic reporting requirements. The November 19, 2020, amendments to 40 CFR §63.6145(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, amendments revised Table 7 of 40 CFR Part 63, Subpart YYYY, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The March 9, 2022, amendments to 40 CFR §63.6095 remove the stay of the effectiveness of the standards for new lean premix and diffusion flame gas-fired turbines that was promulgated in 2004.

§113.1090, Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ)

The commission proposes to amend §113.1090 by incorporating by reference all amendments to 40 CFR Part 63, Subpart ZZZZ, since this section was last amended. During this period, the EPA amended Subpart ZZZZ on November 19, 2020 (85 FR 73854) and December 4, 2020 (85 FR 78412). The November 19, 2020, amendments to 40 CFR §63.6645(b) and (d) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 8 of 40 CFR Part 63, Subpart ZZZZ, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The December 4, 2020, amendments streamlined existing fuel quality

regulations, including removing unnecessary and out-of-date requirements, and replacing them with a single set of provisions and definitions that applies to all gasoline, diesel, and other fuel quality programs. Specifically, amendments to 40 CFR §63.6604 revised a cite from "40 CFR §80.510(b)" to "40 CFR §1090.305."

The commission also proposes to amend the title and rule reference in §113.1090 to "Stationary Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart ZZZZ.

§113.1100, Lime Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AAAAA)

The commission proposes to amend §113.1100 by incorporating by reference all amendments to 40 CFR Part 63, Subpart AAAAA, since this section was last amended. During this period, the EPA amended Subpart AAAAA on July 24, 2020 (85 FR 44960), November 19, 2020 (85 FR 73854), and December 28, 2020 (85 FR 84261). The July 24, 2020, amendments finalized the RTR. The amendments eliminated the general exemptions for SSM and added new provisions requiring electronic reporting. The November 19, 2020, amendments to 40 CFR §63.7130(b) and (c) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 8 of 40 CFR Part 63, Subpart AAAAA, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The December 28, 2020, amendments corrected a final rule that appeared in the *Federal Register* on November 19, 2020. The EPA finalized the amendments to the General Provisions that apply to NESHAP. The action corrected inadvertent typographical errors and redundant text in the FR.

§113.1110, Semiconductor Manufacturing (40 Code of Federal Regulations Part 63, Subpart BBBB)

The commission proposes to amend §113.1110 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BBBB, since this section was last amended. During this period, the EPA amended Subpart BBBB on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to for 40 CFR §63.7189(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1120, Coke Ovens: Pushing, Quenching, and Battery Stacks (40 Code of Federal Regulations Part 63, Subpart CCCC)

The commission proposes to amend §113.1120 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCCC, since this section was last amended. During this period, the EPA amended Subpart CCCC on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.7340 revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1130, Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources (40 Code of Federal Regulations Part 63, Subpart DDDD)

The commission proposes to amend §113.1130 by incorporating by reference all amendments to 40 CFR Part 63, Subpart

DDDDD, since this section was last amended. During this period, the EPA amended Subpart DDDDD on November 14, 2018 (83 FR 56713), November 19, 2020 (85 FR 73854), and December 28, 2020 (85 FR 84261). The November 14, 2018, amendments revised certain existing testing regulations to reflect corrections, updates, and the addition of alternative equipment and methods for source testing of emissions. The revisions do not impose any new substantive requirements on source owners or operators, but improve the quality of data and provide flexibility in the use of approved alternative procedures. Specifically, Table 6 of 40 CFR Part 63, Subpart DDDDD, was revised to allow the use of EPA SW-846-7471B for liquid samples in addition to EPA SW-846-7470A for measuring mercury to allow for compliance flexibility. Table 6 also revised the fuel analysis requirements. The November 19, 2020, amendments to 40 CFR §63.7545(b) and (c) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The December 28, 2020, amendments corrected a final rule that appeared in the *Federal Register* on November 19, 2020. The EPA finalized the amendments to the General Provisions that apply to NESHAP. The action corrected inadvertent typographical errors and redundant text in the FR. Specifically, rule instruction 121 correctly referenced the amendments to 40 CFR §63.7545; however, the corresponding section header was incorrect. The section header was corrected.

The commission also proposes a minor editorial revision to §113.1130 existing rule text by adding "Major Sources" for consistency with the rule title.

§113.1140, Iron and Steel Foundries (40 Code of Federal Regulations Part 63, Subpart EEEEE)

The commission proposes to amend §113.1140 by incorporating by reference all amendments to 40 CFR Part 63, Subpart EEEEE, since this section was last amended. During this period, the EPA amended Subpart EEEEE on September 10, 2020 (85 FR 56080) and November 19, 2020 (85 FR 73854). The September 10, 2020, amendments finalized the RTR. The amendments eliminated the general exemptions for SSM by specifying that emissions standards apply at all times. These final amendments also required electronic reporting of performance test results and compliance reports and made minor corrections and clarifications to a few other rule provisions for major sources and area sources. The November 19, 2020, amendments to 40 CFR §63.7750(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1150, Integrated Iron and Steel Manufacturing Facilities (40 Code of Federal Regulations Part 63, Subpart FFFFF)

The commission proposes to amend §113.1150 by incorporating by reference all amendments to 40 CFR Part 63, Subpart FFFFF, since this section was last amended. During this period, the EPA amended Subpart FFFFF on July 13, 2020 (85 FR 42074) and November 19, 2020 (85 FR 73854). The July 13, 2020, amendments finalized the RTR. The amendments established emission standards for mercury in response to a 2004 administrative petition for reconsideration which minimizes emissions by limiting the amount of mercury per ton of metal scrap used. The EPA also removed exemptions for periods of SSM consistent with a 2008 court decision and clarified that the emissions standards apply at all times; added electronic reporting of performance test results and compliance reports; and made minor corrections and

clarifications for a few other rule provisions. The November 19, 2020, amendments to 40 CFR §63.7840(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1160, Site Remediation (40 Code of Federal Regulations Part 63, Subpart GGGGG)

The commission proposes to amend §113.1160 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GGGGG, since this section was last amended. During this period, the EPA amended Subpart GGGGG on July 10, 2020 (85 FR 41680) and November 19, 2020 (85 FR 73854). The July 10, 2020, amendments finalized the RTR. Based on the results of the technology review, the EPA amended the leak detection and repair program. In addition, the EPA finalized amendments to revised regulatory provisions pertaining to emissions during periods of SSM, including finalizing work practice requirements for PRD and the 240-hour maintenance period for control devices on tanks. The amendments also finalized requirements for electronic submittal of semiannual reports and performance test results. Finally, the amendments also made minor clarifications and corrections. The final revisions to the rule increased the level of emissions control and environmental protection provided by the Site Remediation NESHAP. The November 19, 2020, amendments to 40 CFR §63.7950(b) and (c) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 3 of 40 CFR Part 63, Subpart GGGGG, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1170, Miscellaneous Coating Manufacturing (40 Code of Federal Regulations Part 63, Subpart HHHHH)

The commission proposes to amend §113.1170 by incorporating by reference all amendments to 40 CFR Part 63, Subpart HHHHH, since this section was last amended. During this period, the EPA amended Subpart HHHHH on August 14, 2020 (85 FR 49724), November 19, 2020 (85 FR 73854), and November 25, 2020 (85 FR 75235). The August 14, 2020, amendments finalized the RTR. The amendments addressed emissions during periods of SSM, including removing general exemptions for SSM; clarified regulatory provisions for certain vent control bypasses; revised provision for electronic reporting of performance test results, performance evaluation reports, compliance reports, and NOCS reports; and revised provisions to conduct periodic performance testing of oxidizers used to reduce emissions of organic HAP. The November 19, 2020, amendments to 40 CFR §63.8070(b)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 10 of 40 CFR Part 63 to Subpart HHHHH, by revising 40 CFR §63.9(j) regarding the provision for change in previous information for change in major source status, otherwise §63.8075(e)(8) specifies reporting requirements for process changes; and adding 40 CFR §63.9(k) regarding the provision for electronic reporting procedures, limited to 40 CFR §63.9(j) specifications. The November 25, 2020, amendment corrected a date error in 40 CFR §63.8000(vi) published on August 14, 2020, in the *Federal Register* at 85 FR 49742.

§113.1180, Mercury Emissions from Mercury Cell Chlor-Alkali Plants (40 Code of Federal Regulations Part 63, Subpart IIIII)

The commission proposes to amend §113.1180 by incorporating by reference all amendments to 40 CFR Part 63, Subpart IIIII, since this section was last amended. During this period, the EPA amended Subpart IIIII on November 19, 2020 (85 FR 73854) and December 28, 2020 (85 FR 84261). The November 19, 2020, amendments to 40 CFR §63.8252(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 10 of 40 CFR Part 63, Subpart IIIII, by adding 40 CFR §63.9(k) regarding provisions for electronic reporting procedures, limited to 40 CFR §63.9(j) specifications. The December 28, 2020, amendments corrected 85 FR 73914 published on November 19, 2020. The final MM2A rule instruction 128 correctly referenced the amendments to 40 CFR §63.8252; however, the corresponding regulatory text section header was incorrect. Additionally, the amendatory text for 40 CFR §63.8252(b) incorrectly referenced December 19, 2003, which should have remained April 19, 2004. The amendments corrected the regulatory text section header and the amendatory text.

§113.1190, ABrick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ)

The commission proposes to amend §113.1190 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJJJJ, since this section was last amended. During this period, the EPA amended Subpart JJJJJ on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised the initial notification requirements for Table 8 of 40 CFR Part 63, Subpart JJJJJ, for affected source before December 28, 2015, to submit an initial notification no later than June 22, 2016, or no later than 120 days after the source becomes subject to this subpart, whichever is later as specified in 40 CFR §63.9(b)(2). The amendments also revised Table 10 of 40 CFR Part 63, Subpart JJJJJ, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

The commission also proposes to amend the title of §113.1190 to "Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ)" to correct a typographical error.

§113.1200, Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK)

The commission proposes to amend §113.1200 by incorporating by reference all amendments to 40 CFR Part 63, Subpart KKKKK, since this section was last amended. During this period, the EPA amended Subpart KKKKK on November 1, 2019 (84 FR 58601), November 19, 2020 (85 FR 73854), and November 19, 2021 (86 FR 66038). The November 1, 2019, amendments were issued in response to a petition for reconsideration on the final rule, promulgated on October 26, 2015, as well as the review of the 2015 rule with respect to certain other issues. This action revised the temperature monitoring methodology used to demonstrate continuous compliance with the dioxin/furan emissions limit of the final rule. In addition, concerns regarding VE monitoring of tunnel kiln stacks for continuous compliance with particulate matter (PM) and mercury emission limitations were addressed. The amendments also included requirements for weekly visual inspections of system ductwork and control device equipment for water curtain spray booths. Lastly, the amendments in this action amended the NESHAP to include provisions for emissions averaging, makes technical corrections, and added certain definitions. The November 19, 2020,

amendments revised the initial notification requirements for Table 9 of 40 CFR Part 63, Subpart KKKKK, to no later than 120 days after the source becomes subject to this subpart whichever is later as specified in 40 CFR §63.9(b)(2). Also, the amendments revised Table 11 of 40 CFR Part 63, Subpart KKKKK, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The November 19, 2021, amendments made technical corrections under the NESHAP program for Clay Ceramics Manufacturing to the reports promulgated on November 1, 2019. Specifically, the amendments to 40 CFR §63.8635(g)(1) clarified what reports must be submitted and when they must be submitted. Also, the amendments to Table 2 of 40 CFR Part 63, Subpart KKKKK, clarified the operating limit that must be met.

§113.1210, Asphalt Processing and Asphalt Roofing Manufacturing (40 Code of Federal Regulations Part 63, Subpart LLLLL)

The commission proposes to amend §113.1210 by incorporating by reference all amendments to 40 CFR Part 63, Subpart LLLLL, since this section was last amended. During this period, the EPA amended Subpart LLLLL on March 12, 2020 (85 FR 14526) and November 19, 2020 (85 FR 73854). The March 12, 2020, amendments finalized the EPA's RTR. The amendments corrected and clarified regulatory provisions related to emissions during periods of SSM, including removing general exemptions for SSM; revised monitoring requirements for a control device used to comply with the PM standards; added requirements for periodic performance testing; added electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports; and included other technical corrections to improve consistency and clarity. No revisions were made to the numerical emission limits based on the residual risk analysis or technology review. The November 19, 2020, amendments to 40 CFR §63.8692(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 7 of 40 CFR Part 63, Subpart LLLLL, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1220, Flexible Polyurethane Foam Fabrication Operations (40 Code of Federal Regulations Part 63, Subpart MMMMM)

The commission proposes to amend §113.1220 by incorporating by reference all amendments to 40 CFR Part 63, Subpart MMMMM, since this section was last amended. During this period, the EPA amended Subpart MMMMM on November 19, 2020 (85 FR 73854) and November 18, 2021 (86 FR 64385). The November 19, 2020, amendments to 40 CFR §63.8816(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 7 of 40 CFR Part 63, Subpart MMMMM, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The November 18, 2021, amendments finalized the RTR conducted for the Flexible Polyurethane Foam Fabrication Operations major source category regulated under NESHAP. The amendments included adding a numeric emission limit for existing flame lamination units; removing exemptions for periods of SSM and specifying that the emissions standards always apply; requiring periodic performance tests; requiring electronic reporting of performance

test results and compliance reports; and revising the definitions of "Deviation" and "HAP-based adhesive."

§113.1230, Hydrochloric Acid Production (40 Code of Federal Regulations Part 63, Subpart NNNNN)

The commission proposes to amend §113.1230 by incorporating by reference all amendments to 40 CFR Part 63, Subpart NNNNN, since this section was last amended. During this period, the EPA amended Subpart NNNNN on April 15, 2020 (85 FR 20855) and November 19, 2020 (85 FR 73854). The April 15, 2020, amendments finalized the RTR. The amendments added electronic reporting; addresses periods of SSM; and established work practice standards for maintenance activities under the FCAA. No revisions to the numerical emission limits based on the risk analysis or technology review. The November 19, 2020, amendments to 40 CFR §63.9045(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 7 of 40 CFR Part 63, Subpart NNNNN, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1250, Engine Test Cells/Stands (40 Code of Federal Regulations Part 63, Subpart PPPPP)

The commission proposes to amend §113.1250 by incorporating by reference all amendments to 40 CFR Part 63, Subpart PPPPP, since this section was last amended. During this period, the EPA amended Subpart PPPPP on June 3, 2020 (85 FR 34326) and November 19, 2020 (85 FR 73854). The June 3, 2020, amendments finalized the RTR. The amendments to the Engine Test Cells/Stands NESHAP revised periods of SSM provisions clarified electronic reporting provisions; and made clarifications and technical corrections. The November 19, 2020, amendments to 40 CFR §63.9345(b)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 7 of 40 CFR Part 63, Subpart PPPPP, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1260, Friction Materials Manufacturing Facilities (40 Code of Federal Regulations Part 63, Subpart QQQQQ)

The commission proposes to amend §113.1260 by incorporating by reference all amendments to 40 CFR Part 63, Subpart QQQQQ, since this section was last amended. During this period, the EPA amended Subpart QQQQQ on February 8, 2019 (84 FR 2742) and November 19, 2020 (85 FR 73854). The February 8, 2019, amendments finalized the RTR. The EPA determined that the risks from the category are acceptable and that the current NESHAP provides an ample margin of safety to protect public health. No new cost-effective controls under the technology review to achieve further emissions reductions. However, the final amendments revised reporting requirements for deviations and periods of SSM. The November 19, 2020, amendments removed the date limitation after which a major source cannot become an area source to 40 CFR §63.9485. Also, the amendments to 40 CFR §63.9535(c) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Additionally, the amendments revised Table 1 of 40 CFR Part

63, Subpart QQQQQ, by adding §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1270, Taconite Iron Ore Processing (40 Code of Federal Regulations Part 63, Subpart RRRRR)

The commission proposes to amend §113.1270 by incorporating by reference all amendments to 40 CFR Part 63, Subpart RRRRR, since this section was last amended. During this period, the EPA amended Subpart RRRRR on July 28, 2020 (85 FR 45476) and November 19, 2020 (85 FR 73854). The July 28, 2020, amendments finalized the RTR. The final amendments did not include any revisions to the numerical emission limits of the rule based on the RTR. The amendments eliminated periods of the exemptions previously allowed for periods of SSM and clarified that the emissions standards apply at all times. Also, the amendments clarified electronic reporting of performance test results and compliance reports and made minor technical corrections and amendments to monitoring and testing requirements to reduce the compliance burden on industry while continuing to be protective of the environment. The November 19, 2020, amendments removed the date limitation after which a major source cannot become an area source at 40 CFR §63.9581. The amendments to 40 CFR §63.9640(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 2 of 40 CFR Part 63, Subpart RRRRR, by adding 40 CFR §63.1(c)(6) regarding the provision for a major source reclassifying to an area source; and 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

§113.1280, Refractory Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart SSSSS)

The commission proposes to amend §113.1280 by incorporating by reference all amendments to 40 CFR Part 63, Subpart SSSSS, since this section was last amended. During this period, the EPA amended Subpart SSSSS on November 19, 2020 (85 FR 73854) and November 19, 2021 (86 FR 66045). The November 19, 2020, amendments to 40 CFR §63.9812(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 11 of 40 CFR Part 63, Subpart SSSSS, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications. The November 19, 2021, amendments finalized the RTR conducted for the Refractory Products Manufacturing source category regulated under NESHAP. The EPA found the risks due to emissions of air toxics from this source category were acceptable and that the standards provided an ample margin of safety to protect public health. As a result, the EPA is made no revisions to the emission limits for this source category based on the residual risk. In the technology review, after reviewing developments in practices, processes, and control technologies, the EPA determined that no revisions to the numeric emission limits were necessary. However, the EPA revised certain work practice provisions based on the technology review. The final amendments also included a new provision for certain HAP and a revision of the alternative fuel provisions. The amendments also revised emissions during periods of SSM and emissions during periods of scheduled maintenance. Further, the amendments revised electronic reporting of NOCS reports, performance test results, and perfor-

mance evaluation results. Lastly, the amendments added of test methods and guidance materials, updated several test methods, and made other miscellaneous clarifying and technical corrections.

§113.1290, Primary Magnesium Refining (40 Code of Federal Regulations Part 63, Subpart TTTTT)

The commission proposes to amend §113.1290 by incorporating by reference all amendments to 40 CFR Part 63, Subpart TTTTT, since this section was last amended. During this period, the EPA amended Subpart TTTTT on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.9930(b) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1300, Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUUU)

The commission proposes to amend §113.1300 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUUUU, since this section was last amended. During this period, the EPA amended Subpart UUUUU on April 6, 2017 (82 FR 16736), July 2, 2018 (83 FR 30879), November 14, 2018 (83 FR 56713), May 23, 2019 (84 FR 23727), April 15, 2020 (85 FR 20838), May 22, 2020 (85 FR 31286), and September 9, 2020 (85 FR 55744). The April 6, 2017, amendments revised the electronic reporting requirements for the NESHAPS: Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs) (also known as the Mercury and Air Toxics Standards (MATS)) to allow for the temporary submission, through June 30, 2018, of certain reports using the portable document file (PDF) format and to correct inadvertent errors. This extension allowed the EPA the necessary time to develop, implement, and test the code necessary so that all MATS reports required to be submitted electronically could be submitted using the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool. The July 2, 2018, amendments extended the period during which certain electronic reports required by the MATS could be submitted as PDFs using the ECMPS Client Tool. This extension was necessary because the electronic reporting system that owners or operators of affected MATS sources will be required to use would not be available by June 30, 2018. The November 14, 2018, amendments revised certain existing testing regulations to reflect corrections, updates, and the addition of alternative equipment and methods for source testing of emissions. These revisions were to improve the quality of data and provide flexibility in the use of approved alternative procedures. Specifically, the proposal for Coal- and Oil-Fired EGUs (Subpart UUUUU) Part 63 allowed filter temperature in 40 CFR §63.10010(h)(7)(i)(1); however, it was not revised. Based on comments, EPA deferred finalizing proposed revisions of the temperature tolerances of probe and filter holder heating systems. The amendments revised Table 5 of 40 CFR Part 63, Subpart UUUUU, by adding Method 5I as a test method option because Method 5I is designed for low PM application. The May 23, 2019, *Federal Register* included the CFR corrections in Title 40 of the Code of Federal Regulations, Part 63, §63.8980 to end of Part 63, revised as of July 1, 2018, with the following corrections in Subpart UUUUU regarding the initial and subsequent tune-ups: on page 188, in §63.10021, paragraph (e)(9); and on page 195, in §63.10031, paragraphs (f) introductory text, (f)(1), (2), (4), and (f)(6) introductory text was revised regarding what reports must be submitted and when. The April 15, 2020, amendments established a subcategory of certain existing EGUs firing EBCR for acid gas HAP emissions

that was noticed in a February 7, 2019, proposed rule titled "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil Fired EGUs--Reconsideration of Supplemental Finding and Residual Risk and Technology Review." After consideration of public comments, the EPA determined that there is a need for such a subcategory under the NESHAP for Coal- and Oil-Fired EGUs. The EPA established acid gas HAP emission standards applicable only to the new subcategory. The EPA's final decisions on the other two distinct actions in the 2019 Proposal (i.e., reconsideration of the 2016 Supplemental Finding that it is appropriate and necessary to regulate EGUs under FCAA, §112 and the RTR of MATS) will be announced in a separate final action. The May 22, 2020, *Federal Register* finalized the RTR; however, there were no changes to the NESHAP. The September 9, 2020, amendments for the NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units revised and streamlined the electronic data reporting requirements of MATS, increased data transparency by requiring use of one electronic reporting system instead of two separate systems, and provided enhanced access to MATS data. No new monitoring requirements were imposed by this final action; instead, this action reduces reporting burden, increases MATS data flow and usage, makes it easier for inspectors and auditors to assess compliance, and encourages wider use of CEMS for MATS compliance. In addition, this final action extends the current deadline for alternative electronic data submission via PDF files through December 31, 2023.

§113.1320, Hospital Ethylene Oxide Sterilizers Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWW)

The commission proposes to amend §113.1320 by incorporating by reference all amendments to 40 CFR Part 63, Subpart WWWW, since this section was last amended. During this period, the EPA amended Subpart WWWW on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart WWWW, by removing the entry for 40 CFR §63.9(d)-(j) and adding entries for 40 CFR §63.9(d)-(i) regarding notifications and §63.9(j)-(k) regarding change in information already submitted; electronic reporting.

The commission also proposes a minor editorial revision to §113.1320 existing rule text by adding "Area Sources" to match the rule title and for consistency with other rules.

§113.1350, Iron and Steel Foundries Area Sources (40 Code of Federal Regulations Part 63, Subpart ZZZZ)

The commission proposes to amend §113.1350 by incorporating by reference all amendments to 40 CFR Part 63, Subpart ZZZZ, since this section was last amended. During this period, the EPA amended Subpart ZZZZ on September 10, 2020 (85 FR 56080). The September 10, 2020, amendments finalized the RTR. The amendments removed the exemptions for periods of SSM and specified that emissions standards apply at all times; added electronic reporting of performance test results and compliance reports; and made minor corrections and clarifications to a few other rule provisions for major sources and area sources.

§113.1370, Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBB)

The commission proposes to amend §113.1370 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BBBB, since this section was last amended. During this period, the EPA amended Subpart BBBB on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to

40 CFR §63.11086(e) and Table 3 of 40 CFR Part 63, Subpart BBBBBB, revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 3 by revising 40 CFR §63.9(b)(1)-(2), (4)-(5), initial notifications to submit notification within 120 days after effective date, or no later than 120 days after the source becomes subject to this subpart, whichever is later; notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each; and adding 40 CFR §63.9(k), notifications for electronic reporting procedures, limited to 40 CFR §63.9(j) specifications.

§113.1380, Gasoline Dispensing Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCCCC)

The commission proposes to amend §113.1380 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCCCCC, since this section was last amended. During this period, the EPA amended Subpart CCCCCC on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments clarified the compliance dates, notification, and recordkeeping requirements that apply to sources choosing to reclassify to area source status and to sources that revert back to major source status, including a requirement for electronic notification. The amendments also revised the initial notification requirements for 40 CFR §63.11124(a)(1), (b)(1), so the notification shall be submitted no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. The amendments to Table 3 also revised 40 CFR §63.9(b)(1)-(2), (4)-(5), by clarifying initial notifications provisions to require notification within 120 days after effective date or no later than 120 days after the source becomes subject to this subpart, whichever was later; to clarify notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each; and added §63.9(k), regarding provisions for notifications for electronic reporting procedures, limited to 40 CFR §63.9(j) specifications.

§113.1425, Paint Stripping and Miscellaneous Surface Coating at Area Sources (40 Code of Federal Regulations Part 63, Subpart HHHHHH)

The commission proposes to amend §113.1425 by incorporating by reference all amendments to 40 CFR Part 63, Subpart HHHHHH, since this section was last amended. During this period, the EPA amended Subpart HHHHHH on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.11175(a) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements. Also, the amendments revised Table 1 of 40 CFR Part 63, Subpart HHHHHH, by adding 40 CFR §63.9(k) regarding the provision for electronic submission of notifications or reports, limited to 40 CFR §63.9(j) specifications.

The commission also proposes to amend the title and rule reference in §113.1425 to "Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (40 Code of Federal Regulations Part 63, Subpart HHHHHH)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart HHHHHH.

§113.1435, Industrial, Commercial, and Institutional Boilers Area Sources (40 Code of Federal Regulations Part 63, Subpart JJJJJJ)

The commission proposes to amend §113.1435 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJJJJJ, since this section was last amended. During this period, the EPA amended Subpart JJJJJJ on September 14, 2016 (81 FR 63112). The September 14, 2016, amendments included the final decision on the issues for which the EPA announced reconsideration on January 21, 2015, that pertain to certain aspects of the February 1, 2013, final amendments to the "National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers" (Area Source Boilers Rule). The EPA retained the subcategory and separate requirements for limited-use boilers, consistent with the February 2013 final rule. In addition, the EPA amended three reconsidered provisions: the alternative PM standard for new oil-fired boilers; performance testing for PM for certain boilers based on their initial compliance test; and fuel sampling for mercury for certain coal-fired boilers based on their initial compliance demonstration, consistent with the alternative provisions for which comment was solicited in the January 2015 proposal. The EPA made minor changes to the proposed definitions of "startup" and "shutdown" based on comments received. This final action also addresses a limited number of technical corrections and clarifications on the rule, including removal of the affirmative defense for malfunction in light of a court decision on the issue. These corrections will clarify and improve the implementation of the February 2013 final Area Source Boilers Rule. In this action, the EPA is also denying the requests for reconsideration with respect to the issues raised in the petitions for reconsideration of the final Area Source Boilers Rule for which reconsideration was not granted.

The commission also proposes a minor editorial revision to §113.1435 existing rule text by adding "Generally Available Control Technology" for consistency with other rules.

§113.1445, Acrylic and Modacrylic Fibers Area Sources (40 Code of Federal Regulations Part 63, Subpart LLLLLL)

The commission proposes to amend the title and rule reference in §113.1445 to "Acrylic and Modacrylic Fibers Production Area Sources (40 Code of Federal Regulations Part 63, Subpart LLLLLL)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart LLLLLL.

§113.1450, Carbon Black Production Area Sources (40 Code of Federal Regulations Part 63, Subpart MMMMMM)

The commission proposes to amend §113.1450 by incorporating by reference all reviews to 40 CFR Part 63, Subpart MMMMMM, since this section was last amended. During this period, the EPA reviewed Subpart MMMMMM on November 19, 2021 (86 FR 66096). The November 19, 2021, review finalized the technology review conducted for Carbon Black Production area sources, regulated under NESHAP. The EPA did not change the existing area source standards. However, the area source standard requires all facilities to meet all the requirements in 40 CFR §63.1103(f) of Subpart YY (major source standard). The provisions in 40 CFR §63.1103(f) include carbon black production applicability, definitions, and requirements. Therefore, all changes discussed in Subpart YY, which impact the requirements laid out in 40 CFR §63.1103(f), also impact the requirements of the area source rule for carbon black production.

§113.1460, Flexible Polyurethane Foam Production and Fabrication Area Sources (40 Code of Federal Regulations Part 63, Subpart OOOOOO)

The commission proposes to amend §113.1460 by incorporating by reference all amendments to 40 CFR Part 63, Subpart

OOOOOO, since this section was last amended. During this period, the EPA amended Subpart OOOOOO on November 18, 2021 (86 FR 64385). The November 18, 2021, amendments finalized the NESHAP technology review for two area source categories, Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication, which are combined in one subpart. The amendments removed references to the provisions of another NESHAP, Subpart III, that has been revised and no longer contains the referenced provisions. The amendments also removed Table 1 of 40 CFR Part 63, Subpart OOOOOO, because 40 CFR Part 63, Subpart A, General Provisions, do not apply to sources subject to Subpart OOOOOO.

§113.1465, Lead Acid Battery Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart PPPPPP)

The commission proposes to amend §113.1465 by incorporating by reference all amendments to 40 CFR Part 63, Subpart PPPPPP, since this section was last amended. During this period, the EPA amended Subpart PPPPPP on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.11425(b) and (c) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1470, Wood Preserving Area Sources (40 Code of Federal Regulations Part 63, Subpart QQQQQQ)

The commission proposes to amend §113.1470 by incorporating by reference all amendments to 40 CFR Part 63, Subpart QQQQQQ, since this section was last amended. During this period, the EPA amended Subpart QQQQQQ on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.11432(b) and (c) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1475, Clay Ceramics Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart RRRRRR)

The commission proposes to amend §113.1475 by incorporating by reference all amendments to 40 CFR Part 63, Subpart RRRRRR, since this section was last amended. During this period, the EPA amended Subpart RRRRRR on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.11441(a) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1485, Secondary Nonferrous Metals Processing Area Sources (40 Code of Federal Regulations Part 63, Subpart TTTTTT)

The commission proposes to amend §113.1485 by incorporating by reference all amendments to 40 CFR Part 63, Subpart TTTTTT, since this section was last amended. During this period, the EPA amended Subpart TTTTTT on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.11469(a) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1500, Plating and Polishing Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWWWW)

The commission proposes to amend §113.1500 by incorporating by reference all amendments to 40 CFR Part 63, Subpart WWWWWW, since this section was last amended. During this period, the EPA amended Subpart WWWWWW on November

19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.11509(a)(3) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

The commission also proposes to amend the title and rule reference in §113.1500 to "Plating and Polishing Operations Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWWWW)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart WWWWWW.

§113.1505, Metal Fabrication and Finishing Area Sources (40 Code of Federal Regulations Part 63, Subpart XXXXXX)

The commission proposes to amend §113.1505 by incorporating by reference all amendments to 40 CFR Part 63, Subpart XXXXXX, since this section was last amended. During this period, the EPA amended Subpart XXXXXX on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments to 40 CFR §63.11519(a)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

The commission also proposes to amend the title and rule reference in §113.1505 to "Nine Metal Fabrication and Finishing Area Sources (40 Code of Federal Regulations Part 63, Subpart XXXXXX)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart XXXXXX.

§113.1510, Ferroalloys Production Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart YYYYYY)

The commission proposes to amend §113.1510 by incorporating by reference all amendments to 40 CFR Part 63, Subpart YYYYYY, since this section was last amended. During this period, the EPA amended Subpart YYYYYY on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised the area source NESHAP that contained notification requirements for existing sources with specific deadlines that were in the past at 40 CFR §63.11529. Also, the amendments to 40 CFR §63.11529(a) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1520, Asphalt Processing and Asphalt Roofing Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart AAAAAA)

The commission proposes to amend §113.1520 by incorporating by reference all amendments to 40 CFR Part 63, Subpart AAAAAA, since this section was last amended. During this period, the EPA amended Subpart AAAAAA on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised the area source NESHAP that contains notification requirements for existing sources with specific deadlines that are in the past at 40 CFR §63.11564. Also, the amendments to 40 CFR §63.11564(a)(2) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1525, Chemical Preparations Industry Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBBBB)

The commission proposes to amend §113.1525 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BBBBBB, since this section was last amended. During this period, the EPA amended Subpart BBBBBB on November 19,

2020 (85 FR 73854). The November 19, 2020, amendments revised the area source NESHAP that contains notification requirements for existing sources with specific deadlines that are in the past at 40 CFR §63.11585. Also, amendments to 40 CFR §63.11585(b)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1530, Paints and Allied Products Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCCCC)

The commission proposes to amend §113.1530 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCCCCC, since this section was last amended. During this period, the EPA amended Subpart CCCCCC on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised the area source NESHAP that contains notification requirements for existing sources with specific deadlines that are in the past at 40 CFR §63.11603. Also, the amendments to 40 CFR §63.11603(a)(1) revised the initial notification requirements to no later than 120 calendar days after the source becomes subject to the relevant NESHAP requirements.

§113.1555, Polyvinyl Chloride and Copolymers Production Major Sources (40 Code of Federal Regulations Part 63, Subpart HHHHHHH)

The commission proposes to amend §113.1555 by incorporating by reference all amendments to 40 CFR Part 63, Subpart HHHHHHH, since this section was last amended. During this period, the EPA amended Subpart HHHHHHH on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 4 of 40 CFR Part 63, Subpart HHHHHHH, by revising 40 CFR §63.1(a)(1)-(a)(4), (a)(6), (a)(10)-(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (c)(6), (e) regarding provisions for applicability; and adding 40 CFR §63.9(k) regarding provisions for electronic reporting procedures, limited to 40 CFR §63.9(j) specifications.

The commission also proposes to amend the title of §113.1555 to remove "Major Sources" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart HHHHHHH.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no 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 rulemaking.

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 would be compliance with federal law, increased consistency between federal and state air quality regulations, and the maintenance of TCEQ's existing and future delegation for MACT or GACT standards.

The proposed rulemaking is not anticipated to result in 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 would 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 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 positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Tex. Gov't Code Ann., §2001.0225 and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. 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. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., §2001.0225 applies only 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 pro-

gram; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of these proposed rules is to make amendments to a number of existing NESHAPs incorporated into Chapter 113 to allow the agency to implement and enforce the updated versions of the federal NESHAP. The proposed rulemaking revises Chapter 113 to incorporate by reference changes that the EPA has made to the existing NESHAP for Source Categories under 40 CFR Part 63 as published through March 9, 2022.

The NESHAPs are promulgated by the EPA for source categories mandated by 42 United States Code (USC), §7412 and are required to be included in federal operating permits by 42 USC, §7661a. These NESHAPs are technology-based standards commonly referred to as MACT or GACT standards which the EPA develops to regulate emissions of HAPs as required under the FCAA. Certain sources of HAPs will be affected, and stationary sources are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. As discussed in the Fiscal Note of the rulemaking proposal, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with federal MACT or GACT standards on 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.

Under 42 USC, §7661a, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including NESHAPs, which are required under 42 USC, §7412. Similar to requirements in 42 USC, §7410, regarding the requirement to adopt and implement plans to attain and maintain the National Ambient Air Quality Standards, states are not free to ignore requirements in 42 USC, §7661a, and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. Such rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating, or designed to satisfy, specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission in order to meet a federal requirement was considered to be a major environmental rule that

exceeds federal law, then each of those rules would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact, creates no additional impacts since the proposed rules do not modify the federal NESHAP, but are incorporations by reference, which do not change the federal requirements.

For these reasons, the proposed rules fall under the exception in Tex. Gov't Code Ann., §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. - Austin 1995), writ denied with *per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Mosley v. Tex. Health & Human Services Comm'n*, 593 S.W.3d 250 (Tex. 2019); *Tex. Ass'n of Appraisal Districts, Inc. v. Hart*, 382 S.W.3d 587 (Tex. App. - Austin 2012, no pet.); *Tex. Dep't of Protective & Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170 (Tex. 2004).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance," Tex. Gov't Code Ann., §2001.035. The legislature specifically identified Tex. Gov't Code Ann., §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission proposes that it has substantially complied with the requirements of Tex. Gov't Code Ann., §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble.

As explained previously in this preamble, the specific intent of the proposed rulemaking is to implement requirements of the FCAA. The NESHAP standards being proposed for incorporation into state law are federal technology-based standards that are required by 42 USC, §7412, required to be included in federal operating permits under 42 USC, §7661a, proposed for IBR without modification or substitution, and will not exceed any standard set by state or federal law. These proposed rules are not the result of an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA delegates the NESHAP to Texas in accordance with the delegation procedures codified in 40 CFR Part 63. The proposed amendments were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and

the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Tex. Gov't Code Ann., §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. 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 the proposed rulemaking and performed an assessment of whether the requirements of Tex. Gov't Code Ann., Chapter 2007 are applicable. The commission's preliminary assessment indicates Tex. Gov't Code Ann., Chapter 2007 does not apply.

Under Tex. Gov't Code Ann., §2007.002(5), "taking" means: "(A) 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 Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) 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 (ii) 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 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 preliminary takings impact analysis for the proposed rulemaking action as required by Tex. Gov't Code Ann., §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to make amendments to a number of existing NESHAPs incorporated into Chapter 113 to update them with changes made by EPA through March 9, 2022. The NESHAPs are promulgated by the EPA for source categories mandated by 42 USC, §7412 and are required to be included in federal operating permits by 42 USC, §7661a. These NESHAPs are technology-based standards commonly referred to as MACT or GACT standards which the EPA develops to regulate emissions of HAPs as required under the FCAA. Certain sources of HAPs will be affected, and stationary sources are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. The proposed rules do not create any additional burden on private real property. Under federal law, the affected industries will be required to comply with the NESHAPs regardless of whether the commission or the EPA is the agency responsible for implementation of the NESHAPs.

Tex. Gov't Code Ann., §2007.003(b)(4) provides that the requirements of Chapter 2007 of the Texas Government Code do not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law. In addition, the commission's assessment indicates that Tex. Gov't Code Ann., Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial

threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. The incorporation of revisions to the NESHAP will allow for the implementation and enforcement of federal requirements to address hazardous air pollution. The implementation and enforcement of the NESHAP addresses and advances public health and safety issues arising due to hazardous air pollution, and because these proposed rules do not impose a greater burden than what is already required by the federal emission guidelines, this action is exempt under Tex. Gov't Code Ann., §2007.003(b)(13).

Any reasonable alternative to the proposed rulemaking would be excluded from a takings analysis required under Chapter 2007 of the Texas Government Code for the same reasons as elaborated in this analysis. As discussed in this preamble, states are required to include the requirements in state issued federal operating permits. If the state does not adopt the proposed rules, the federal rules will continue to apply. The proposed rules present as narrowly tailored an approach to complying with the federal mandate as possible without unnecessary incursion into possible private real property interests. Consequently, the proposed rules would not create any additional burden on private real property. The proposed rules would 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 would 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 would not cause a taking under Tex. Gov't Code Ann., Chapter 2007; nor does the Tex. Gov't Code Ann., Chapter 2007 apply to the proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal 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 proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rules 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(1), Goals). The CMP policy applicable to the proposed rules 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, Policies for Emission of Air Pollutants). The proposed rules would incorporate federal regulations concerning emissions of HAPs from certain industries into Chapter 113, allowing the commission to enforce those standards. This would tend to benefit the environment because it would result in lower emissions of HAPs. Therefore, in accordance with 31 TAC §505.22(d), Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules would not violate or exceed any standards identified in the applicable CMP goal

and policy because the proposed 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.

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.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 113 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators subject to the Federal Operating Permits Program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permits to include the amended sections of Chapter 113. In addition, owners and operators of area sources should be aware that federal rules require certain area source categories to obtain a federal operating permit.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on Thursday, August 11, 2022, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, August 9, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, August 10, 2022, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at: https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZWJmMDM4ZTYtN2NkZS00YWQ-5LThkNDMtZjQyMDBiNGYwYWMY%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

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 2022-005-113-AI. The comment period closes on August 15, 2022. Please choose one of the methods provided to submit your *written* comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/proposal_adopt.html. For further information, please contact Melanie Nelson, Air Permits Division, (512) 239-1350.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under 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, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the 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, §382.015, concerning the Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; THSC, §382.022, concerning Investigations, which authorizes the executive director authority to make or require investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The proposed amendments implement TWC, §5.103 and §7.002; and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017, 382.022, and 382.051.

§113.100. General Provision (40 Code of Federal Regulations Part 63, Subpart A).

The General Provisions for the National Emission Standards for Hazardous Air Pollutants for Source Categories as specified in 40 Code of Federal Regulations (CFR) Part 63, Subpart A, are incorporated by reference as amended through November 19, 2021 (86 FR 66038), (86 FR 66045), and (86 FR 66096) [December 4, 2015 (80 FR 75817)], with the following exceptions.

(1) The language of 40 CFR §63.5(e)(2)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 180 calendar days after receipt of sufficient information to evaluate an application submitted under 40 CFR §63.5(d). The 180-day approval or denial period will begin after the owner or operator has been notified in writing that the application is complete. The

executive director will notify the owner or operator in writing of the status of the application, that is, whether the application contains sufficient information to make a determination, within 90 calendar days after receipt of the original application and within 60 calendar days after receipt of any supplementary information that is submitted.

(2) The language of 40 CFR §63.6(i)(12)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 60 calendar days after receipt of sufficient information to evaluate a request submitted under 40 CFR §63.6(i)(4)(i) or (i)(5). The 60-day approval or denial period will begin after the owner or operator has been notified in writing that the application is complete. The executive director will notify the owner or operator in writing of the status of the application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(3) The language of 40 CFR §63.6(i)(13)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 60 calendar days after receipt of sufficient information to evaluate a request submitted under 40 CFR §63.6(i)(4)(ii). The 60-day approval or denial period will begin after the owner or operator has been notified in writing that the application is complete. The executive director will notify the owner or operator in writing of the status of the application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(4) The language of 40 CFR §63.6(i)(13)(ii) is amended to read as follows: When notifying the owner or operator that the application is not complete, the executive director will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after they are notified of the incomplete application, additional information, or arguments to the executive director to enable further action on the application.

(5) The language of 40 CFR §63.8(e)(5)(ii) is amended to read as follows: The owner or operator of an affected source using a Continuous Opacity Monitoring System (COMS) to determine opacity compliance during any performance test required under §63.7 and described in §63.6(d)(6) shall furnish the executive director two or, upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 30 calendar days before the performance test required under §63.7 is conducted.

(6) The language of 40 CFR §63.9(i)(3) is amended to read as follows: If, in the executive director's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the executive director will approve the adjustment. The executive director will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 30 calendar days of receiving sufficient information to evaluate the request.

(7) The language of 40 CFR §63.10(e)(2)(ii) is amended to read as follows: The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test

required under §63.7 and described in §63.6(d)(6) shall furnish the executive director two or, upon request, three copies of a written report of the results of the COMS performance evaluation conducted under §63.8(e). The copies shall be furnished at least 30 calendar days before the performance test required under §63.7 is conducted.

§113.106. *List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List (40 Code of Federal Regulations Part 63, Subpart C).*

The provisions of 40 Code of Federal Regulations Part 63, Subpart C, concerning the List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List, are incorporated by reference as amended through January 5, 2022 (87 FR 393) [~~December 19, 2005 (70 FR 75057)~~].

§113.110. *Synthetic Organic Chemical Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart F).*

The Synthetic Organic Chemical Manufacturing Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart F, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~December 21, 2006 (71 FR 76614)~~].

§113.120. *Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G).*

The Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart G, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~February 27, 2014 (79 FR 11228)~~].

§113.130. *Organic Hazardous Air Pollutants for Equipment Leaks (40 Code of Federal Regulations Part 63, Subpart H).*

The Organic Hazardous Air Pollutants for Equipment Leaks Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart H, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~December 22, 2008 (73 FR 78199)~~].

§113.170. *Coke Oven Batteries (40 Code of Federal Regulations Part 63, Subpart L).*

The Coke Oven Batteries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart L, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~April 20, 2006 (71 FR 20446)~~].

§113.180. *Perchloroethylene Dry Cleaning Facilities (40 Code of Federal Regulations Part 63, Subpart M).*

The Perchloroethylene Dry Cleaning Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart M, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~July 11, 2008 (73 FR 39871)~~].

§113.190. *Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N).*

The Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart N, is incorporated by reference as amended

through November 19, 2020 (85 FR 73854) [February 27, 2014 (79 FR 11228)].

§113.200. *Ethylene Oxide Emissions Standards for Sterilization Facilities (40 Code of Federal Regulations Part 63, Subpart O).*

The Ethylene Oxide Emissions Standards for Sterilization Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart O, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [February 27, 2014 (79 FR 11228)].

§113.220. *Industrial Process Cooling Towers (40 Code of Federal Regulations Part 63, Subpart Q).*

The Industrial Process Cooling Towers Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart Q, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 7, 2006 (71 FR 17738)].

§113.230. *Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (40 Code of Federal Regulations Part 63, Subpart R).*

The Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart R, is incorporated by reference as amended through December 4, 2020 (85 FR 78412) [December 22, 2008 (73 FR 78199)].

§113.240. *Pulp and Paper Industry (40 Code of Federal Regulations Part 63, Subpart S).*

The Pulp and Paper Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart S, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [September 11, 2012 (77 FR 55698)].

§113.250. *Halogenated Solvent Cleaning (40 Code of Federal Regulations Part 63, Subpart T).*

The Halogenated Solvent Cleaning Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart T, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [May 3, 2007 (72 FR 25138)].

§113.260. *Group I Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart U).*

The Group I Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart U, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 21, 2011 (76 FR 22566)].

§113.280. *Epoxy Resins Production and Non-Nylon Polyamides Production (40 Code of Federal Regulations Part 63, Subpart W).*

The Epoxy Resins Production and Non-Nylon Polyamides Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart W, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.290. *Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X).*

The Secondary Lead Smelting Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart X, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [January 3, 2014 (79 FR 367)].

§113.300. *Marine Tank Vessel Loading Operations (40 Code of Federal Regulations Part 63, Subpart Y).*

The Marine Tank Vessel Loading Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart Y, is incorporated by reference as amended

through November 19, 2020 (85 FR 73854) [December 1, 2015 (80 FR 75178)].

§113.320. *Phosphoric Acid Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AA).*

The Phosphoric Acid Manufacturing Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart AA, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [August 19, 2015 (80 FR 50386)].

§113.330. *Phosphate Fertilizers Production Plants (40 Code of Federal Regulations Part 63, Subpart BB).*

The Phosphate Fertilizers Production Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BB, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [August 19, 2015 (80 FR 50386)].

§113.340. *Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC).*

The Petroleum Refineries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CC, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [July 13, 2016 (81 FR 45232)].

§113.350. *Off-Site Waste and Recovery Operations (40 Code of Federal Regulations Part 63, Subpart DD).*

The Off-Site Waste and Recovery Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DD, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [March 18, 2015 (80 FR 14248)].

§113.360. *Magnetic Tape Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart EE).*

The Magnetic Tape Manufacturing Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EE, is incorporated by reference as amended through December 28, 2020 (85 FR 84261) [June 23, 2003 (68 FR 37352)].

§113.380. *Aerospace Manufacturing and Rework Facilities (40 Code of Federal Regulations Part 63, Subpart GG).*

The Aerospace Manufacturing and Rework Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GG, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [August 3, 2016 (81 FR 51114)].

§113.390. *Oil and Natural Gas Production Facilities (40 Code of Federal Regulations Part 63, Subpart HH).*

The Oil and Natural Gas Production Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HH, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [August 16, 2012 (77 FR 49490)].

§113.400. *Shipbuilding and Ship Repair (Surface Coating) (40 Code of Federal Regulations Part 63, Subpart II).*

The Shipbuilding and Ship Repair (Surface Coating) Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart II, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [November 21, 2011 (76 FR 72050)].

§113.410. *Wood Furniture Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart JJ).*

The Wood Furniture Manufacturing Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJ, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~November 21, 2011~~ (76 FR 72050)].

§113.420. *Printing and Publishing Industry* (40 Code of Federal Regulations Part 63, Subpart KK).

The Printing and Publishing Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart KK, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~April 21, 2011~~ (76 FR 22566)].

§113.430. *Primary Aluminum Reduction Plants* (40 Code of Federal Regulations Part 63, Subpart LL).

The Primary Aluminum Reduction Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LL, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~October 15, 2015~~ (80 FR 62390)].

§113.440. *Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills* (40 Code of Federal Regulations Part 63, Subpart MM).

The Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MM, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~April 20, 2006~~ (71 FR 20446)].

§113.500. *Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process* (40 Code of Federal Regulations Part 63, Subpart SS).

The Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart SS, is incorporated by reference as amended through July 6, 2020 (85 FR 40386) [~~April 20, 2006~~ (71 FR 20446)].

§113.510. *Equipment Leaks - Control Level 1* (40 Code of Federal Regulations Part [~~CFR~~] 63, Subpart TT).

The Equipment Leaks - Control Level 1 Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart TT, is incorporated by reference as amended through July 12, 2002 (67 FR 46258).

§113.520. *Equipment Leaks - Control Level 2* (40 Code of Federal Regulations Part [~~CFR~~] 63, Subpart UU).

The Equipment Leaks - Control Level 2 Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UU, is incorporated by reference as amended through July 12, 2002 (67 FR 46258).

§113.540. *Storage Vessels (Tanks) - Control Level 2* (40 Code of Federal Regulations Part [~~CFR~~] 63, Subpart WW).

The Storage Vessels (Tanks) - Control Level 2 Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart WW, is incorporated by reference as amended through July 12, 2002 (67 FR 46258).

§113.550. *Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations* (40 Code of Federal Regulations Part 63, Subpart XX).

The Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart

XX, is incorporated by reference as amended through July 6, 2020 (85 FR 40386) [~~April 13, 2005~~ (70 FR 19266)].

§113.560. *Source Categories: Generic Maximum Achievable Control Technology Standards* (40 Code of Federal Regulations Part 63, Subpart YY).

The Source Categories: Generic Maximum Achievable Control Technology Standards as specified in 40 Code of Federal Regulations Part 63, Subpart YY, is incorporated by reference as amended through November 19, 2021 (86 FR 66096) [~~October 8, 2014~~ (79 FR 60898)].

§113.600. *Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants* (40 Code of Federal Regulations Part 63, Subpart CCC).

The Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCC, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~September 19, 2012~~ (77 FR 58220)].

§113.610. *Mineral Wool Production* (40 Code of Federal Regulations Part 63, Subpart DDD).

The Mineral Wool Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDD, is incorporated by reference as amended through December 28, 2020 (85 FR 84261) [~~July 29, 2015~~ (80 FR 45280)].

§113.620. *Hazardous Waste Combustors* (40 Code of Federal Regulations Part 63, Subpart EEE).

The Hazardous Waste Combustors [~~Combustor~~] Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EEE, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~October 28, 2008~~ (73 FR 64068)].

§113.640. *Pharmaceuticals Production* (40 Code of Federal Regulations Part 63, Subpart GGG).

The Pharmaceuticals Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GGG, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~February 27, 2014~~ (79 FR 11228)].

§113.650. *Natural Gas Transmission and Storage Facilities* (40 Code of Federal Regulations Part 63, Subpart HHH).

The Natural Gas Transmission and Storage Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHH, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~August 16, 2012~~ (77 FR 49490)].

§113.660. *Flexible Polyurethane Foam Production* (40 Code of Federal Regulations Part 63, Subpart III).

The Flexible Polyurethane Foam Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart III, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~August 15, 2014~~ (79 FR 48073)].

§113.670. *Group IV Polymers and Resins* (40 Code of Federal Regulations Part 63, Subpart JJJ).

The Group IV Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJ, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [~~March 27, 2014~~ (79 FR 17340)].

§113.690. *Portland Cement Manufacturing Industry* (40 Code of Federal Regulations Part 63, Subpart LLL).

The Portland Cement Manufacturing Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LLL, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [July 25, 2016 (81 FR 48356)].

§113.700. *Pesticide Active Ingredient Production (40 Code of Federal Regulations Part 63, Subpart MMM).*

The Pesticide Active Ingredient Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MMM, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [March 27, 2014 (79 FR 17340)].

§113.710. *Wool Fiberglass Manufacturing (40 Code of Federal Regulations Part 63, Subpart NNN).*

The Wool Fiberglass Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart NNN, is incorporated by reference as amended through December 28, 2020 (85 FR 84261) [July 29, 2015 (80 FR 45280)].

§113.720. *Manufacture of Amino/Phenolic Resins (40 Code of Federal Regulations Part 63, Subpart OOO).*

The Manufacture of Amino/Phenolic Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart OOO, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [October 8, 2014 (79 FR 60898)].

§113.730. *Polyether Polyols Production (40 Code of Federal Regulations Part 63, Subpart PPP).*

The Polyether Polyols Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart PPP, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [March 27, 2014 (79 FR 17340)].

§113.740. *Primary Copper Smelting (40 Code of Federal Regulations Part 63, Subpart QQQ).*

The Primary Copper Smelting Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart QQQ, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.750. *Secondary Aluminum Production (40 Code of Federal Regulations Part 63, Subpart RRR).*

The Secondary Aluminum Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RRR, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [June 13, 2016 (81 FR 38085)].

§113.770. *Primary Lead Smelting [Processing] (40 Code of Federal Regulations Part 63, Subpart TTT).*

The Primary Lead Smelting [Processing] Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart TTT, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [November 15, 2011 (76 FR 70834)].

§113.780. *Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 Code of Federal Regulations Part 63, Subpart UUU).*

The Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUU, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [July 13, 2016 (81 FR 45232)].

§113.790. *Publicly Owned Treatment Works (40 Code of Federal Regulations Part 63, Subpart VVV).*

The Publicly Owned Treatment Works Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart VVV, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [December 22, 2008 (73 FR 78199)].

§113.810. *Ferroalloys Production: Ferromanganese and Silicomanganese (40 Code of Federal Regulations Part 63, Subpart XXX).*

The Ferroalloys Production: Ferromanganese and Silicomanganese Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart XXX, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [June 30, 2015 (80 FR 37366)].

§113.840. *Municipal Solid Waste Landfills (40 Code of Federal Regulations Part 63, Subpart AAAA).*

The Municipal Solid Waste Landfills Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart AAAA, is incorporated by reference as amended through February 14, 2020 (87 FR 8197) [April 20, 2006 (71 FR 20446)].

§113.860. *Manufacturing of Nutritional Yeast (40 Code of Federal Regulations Part 63, Subpart CCCC).*

The Manufacturing of Nutritional Yeast Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCCC, is incorporated by reference as amended through October 16, 2017 (82 FR 48156) [February 27, 2014 (79 FR 12228)].

§113.870. *Plywood and Composite Wood Products (40 Code of Federal Regulations Part 63, Subpart DDDD).*

The Plywood and Composite Wood Products Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDDD, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted July 30, 2004 (69 FR 45944) and amended February 16, 2006 (71 FR 8342), April 20, 2006 (71 FR 20446), and October 29, 2007 (72 FR 61060)].

§113.880. *Organic Liquids Distribution (Non-Gasoline) (40 Code of Federal Regulations Part 63, Subpart EEEE).*

The Organic Liquids Distribution (Non-Gasoline) Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EEEE, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [December 22, 2008 (73 FR 78199)].

§113.890. *Miscellaneous Organic Chemical Manufacturing (40 Code of Federal Regulations Part 63, Subpart FFFF).*

The Miscellaneous Organic Chemical Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart FFFF, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [December 22, 2008 (73 FR 78199)].

§113.900. *Solvent Extraction for Vegetable Oil Production (40 Code of Federal Regulations Part 63, Subpart GGGG).*

The Solvent Extraction for Vegetable Oil Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GGGG, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.910. *Wet-Formed Fiberglass Mat Production (40 Code of Federal Regulations Part 63, Subpart HHHH).*

The Wet-Formed Fiberglass Mat Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHHH, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.920. *Surface Coating of Automobiles and Light-Duty Trucks (40 Code of Federal Regulations Part 63, Subpart IIII).*

The Surface Coating of Automobiles and Light-Duty Trucks Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart IIII, is incorporated by reference as amended through November 19, 2021 (86 FR 66038) [April 24, 2007 (72 FR 20227)].

§113.930. *Paper and Other Web Coating (40 Code of Federal Regulations Part 63, Subpart JJJJ).*

The Paper and Other Web Coating Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJJ, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [May 24, 2006 (71 FR 29792)].

§113.940. *Surface Coating of Metal Cans (40 Code of Federal Regulations Part 63, Subpart KKKK).*

The Surface Coating of Metal Cans Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart KKKK, is incorporated by reference as amended through November 19, 2021 (86 FR 66038) [April 20, 2006 (71 FR 20446)].

§113.960. *Surface Coating of Miscellaneous Metal Parts and Products (40 Code of Federal Regulations Part 63, Subpart MMMM).*

The Surface Coating of Miscellaneous Metal Parts and Products Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MMMM, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [December 22, 2006 (71 FR 76927)].

§113.970. *Surface Coating of Large Appliances (40 Code of Federal Regulations Part 63, Subpart NNNN).*

The Surface Coating of Large Appliances Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart NNNN, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.980. *Printing, Coating, and Dyeing of Fabrics and Other Textiles (40 Code of Federal Regulations Part 63, Subpart OOOO).*

The Printing, Coating, and Dyeing of Fabrics and Other Textiles Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart OOOO, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [May 24, 2006 (71 FR 29792)].

§113.990. *Surface Coating of Plastic Parts and Products (40 Code of Federal Regulations Part 63, Subpart PPPP).*

The Surface Coating of Plastic Parts and Products Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart PPPP, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 24, 2007 (72 FR 20227)].

§113.1000. *Surface Coating of Wood Building Products (40 Code of Federal Regulations Part 63, Subpart QQQQ).*

The Surface Coating of Wood Building Products Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart QQQQ, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1010. *Surface Coating of Metal Furniture (40 Code of Federal Regulations Part 63, Subpart RRRR).*

The Surface Coating of Metal Furniture Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RRRR, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1020. *Surface Coating of Metal Coil (40 Code of Federal Regulations Part [CFR] 63, Subpart SSSS).*

The Surface Coating of Metal Coil Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart SSSS, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [March 17, 2003 (68 FR 12590)].

§113.1030. *Leather Finishing Operations (40 Code of Federal Regulations Part 63, Subpart TTTT).*

The Leather Finishing Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart TTTT, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [February 7, 2005 (70 FR 6355)].

§113.1040. *Cellulose Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart UUUU).*

The Cellulose Products Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUUU, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [February 27, 2014 (79 FR 11228)].

§113.1050. *Boat Manufacturing (40 Code of Federal Regulations Part [CFR] 63, Subpart VVVV).*

The Boat Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart VVVV, is incorporated by reference as amended through November 19, 2021 (86 FR 66038) [October 3, 2001 (66 FR 50504)].

§113.1060. *Reinforced Plastic Composites Production (40 Code of Federal Regulations Part 63, Subpart WWWW).*

The Reinforced Plastic Composites Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart WWWW, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1070. *Rubber Tire Manufacturing (40 Code of Federal Regulations Part 63, Subpart XXXX).*

The Rubber Tire Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart XXXX, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1080. *Stationary Combustion Turbines (40 Code of Federal Regulations Part 63, Subpart YYYY).*

The Stationary Combustion Turbines Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart YYYY, is incorporated by reference as amended through March 9, 2022 (87 FR 13183) [April 20, 2006 (71 FR 20446)].

§113.1090. *Stationary Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ).*

The Stationary Reciprocating Internal Combustion Engines Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart ZZZZ, is incorporated by reference as amended through December 4, 2020 (85 FR 78412) [February 27, 2014 (79 FR 11228)].

§113.1100. *Lime Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AAAAA).*

The Lime Manufacturing Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart AAAAA, is incorporated by reference as amended through December 28, 2020 (85 FR 84261) [April 20, 2006 (71 FR 20446)].

§113.1110. *Semiconductor Manufacturing (40 Code of Federal Regulations Part 63, Subpart BBBB).*

The Semiconductor Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BBBB, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [July 22, 2008 (73 FR 42529)].

§113.1120. *Coke Ovens: Pushing, Quenching, and Battery Stacks (40 Code of Federal Regulations Part 63, Subpart CCCC).*

The Coke Ovens: Pushing, Quenching, and Battery Stacks Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCCC, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1130. *Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources (40 Code of Federal Regulations Part 63, Subpart DDDD).*

The Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDDD, is incorporated by reference as amended through December 28, 2020 (85 FR 84261) [November 20, 2015 (80 FR 72790)].

§113.1140. *Iron and Steel Foundries (40 Code of Federal Regulations Part 63, Subpart EEEE).*

The Iron and Steel Foundries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EEEE, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [February 7, 2008 (73 FR 7210)].

§113.1150. *Integrated Iron and Steel Manufacturing Facilities (40 Code of Federal Regulations Part 63, Subpart FFFF).*

The Integrated Iron and Steel Manufacturing Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart FFFF, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [July 13, 2006 (71 FR 39579)].

§113.1160. *Site Remediation (40 Code of Federal Regulations Part 63, Subpart GGGG).*

The Site Remediation Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GGGG, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [December 22, 2008 (73 FR 78199)].

§113.1170. *Miscellaneous Coating Manufacturing (40 Code of Federal Regulations Part 63, Subpart HHHH).*

The Miscellaneous Coating Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHHH, is incorporated by reference as amended through November 25, 2020 (85 FR 75235) [December 22, 2008 (73 FR 78199)].

§113.1180. *Mercury Emissions from Mercury Cell Chlor-Alkali Plants (40 Code of Federal Regulations Part 63, Subpart IIII).*

The Mercury Emissions from Mercury Cell Chlor-Alkali Plants Maximum Achievable Control Technology standard as specified in 40 Code

of Federal Regulations Part 63, Subpart IIII, is incorporated by reference as amended through December 28, 2020 (85 FR 84261) [April 20, 2006 (71 FR 20446)].

§113.1190. *Brick [ABrick] and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJ).*

The Brick and Structural Clay Products Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJJ, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted October 26, 2015 (80 FR 65470)].

§113.1200. *Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKK).*

The Clay Ceramics Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart KKKK, is incorporated by reference as amended through November 19, 2021 (86 FR 66038) [December 4, 2015 (80 FR 75817)].

§113.1210. *Asphalt Processing and Asphalt Roofing Manufacturing (40 Code of Federal Regulations Part 63, Subpart LLLL).*

The Asphalt Processing and Asphalt Roofing Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LLLL, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1220. *Flexible Polyurethane Foam Fabrication Operations (40 Code of Federal Regulations Part 63, Subpart MMMM).*

The Flexible Polyurethane Foam Fabrication Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MMMM, is incorporated by reference as amended through November 18, 2021 (86 FR 64385) [April 20, 2006 (71 FR 20446)].

§113.1230. *Hydrochloric Acid Production (40 Code of Federal Regulations Part 63, Subpart NNNN).*

The Hydrochloric Acid Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart NNNN, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1250. *Engine Test Cells/Standards (40 Code of Federal Regulations Part 63, Subpart PPPP).*

The Engine Test Cells/Standards Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart PPPP, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1260. *Friction Materials Manufacturing Facilities (40 Code of Federal Regulations Part 63, Subpart QQQQ).*

The Friction Materials Manufacturing Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart QQQQ, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1270. *Taconite Iron Ore Processing (40 Code of Federal Regulations Part 63, Subpart RRRR).*

The Taconite Iron Ore Processing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RRRR, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1280. *Refractory Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart SSSS).*

The Refractory Products Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart SSSSS, is incorporated by reference as amended through November 19, 2021 (86 FR 66045) [April 20, 2006 (71 FR 20446)].

§113.1290. *Primary Magnesium Refining (40 Code of Federal Regulations Part 63, Subpart TTTTT).*

The Primary Magnesium Refining Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart TTTTT, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [April 20, 2006 (71 FR 20446)].

§113.1300. *Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUUU).*

The Coal- and Oil-Fired Electric Utility Steam Generating Units Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUUUU, is incorporated by reference as amended through September 9, 2020 (85 FR 55744) [April 6, 2016 (81 FR 20172)].

§113.1320. *Hospital Ethylene Oxide Sterilizers Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWWW).*

The Hospital Ethylene Oxide Sterilizers Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart WWWWW, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted December 28, 2007 (72 FR 73611)].

§113.1350. *Iron and Steel Foundries Area Sources (40 Code of Federal Regulations Part 63, Subpart ZZZZZ).*

The Iron and Steel Foundries Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart ZZZZZ, is incorporated by reference as amended through September 10, 2020 (85 FR 56080) [adopted January 2, 2008 (73 FR 226)].

§113.1370. *Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBBB).*

The Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BBBBB, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [January 24, 2011 (76 FR 4156)].

§113.1380. *Gasoline Dispensing Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCCC).*

The Gasoline Dispensing Facilities Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCCCC, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [January 24, 2011 (76 FR 4156)].

§113.1425. *Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (40 Code of Federal Regulations Part 63, Subpart HHHHH).*

The Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHHHH, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [February 13, 2008 (73 FR 8408)].

§113.1435. *Industrial, Commercial, and Institutional Boilers Area Sources (40 Code of Federal Regulations Part 63, Subpart JJJJJ).*

The Industrial, Commercial, and Institutional Boilers Area Sources Generally Available Control Technology standard as specified in 40

Code of Federal Regulations Part 63, Subpart JJJJJ, is incorporated by reference as amended through September 14, 2016 (81 FR 63112) [February 1, 2013 (78 FR 7488)].

§113.1445. *Acrylic and Modacrylic Fibers Production Area Sources (40 Code of Federal Regulations Part 63, Subpart LLLLL).*

The Acrylic and Modacrylic Fibers Production Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LLLLL, is incorporated by reference as amended through March 26, 2008 (73 FR 15923).

§113.1450. *Carbon Black Production Area Sources (40 Code of Federal Regulations Part 63, Subpart MMMMM).*

The Carbon Black Production Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MMMMM, is incorporated by reference as amended through November 19, 2021 (86 FR 66096) [March 26, 2008 (73 FR 15923)].

§113.1460. *Flexible Polyurethane Foam Production and Fabrication Area Sources (40 Code of Federal Regulations Part 63, Subpart OOOOO).*

The Flexible Polyurethane Foam Production and Fabrication Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart OOOOO, is incorporated by reference as amended through November 18, 2021 (86 FR 64385) [March 26, 2008 (73 FR 15923)].

§113.1465. *Lead Acid Battery Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart PTTTT).*

The Lead Acid Battery Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart PTTTT, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [March 26, 2008 (73 FR 15923)].

§113.1470. *Wood Preserving Area Sources (40 Code of Federal Regulations Part 63, Subpart QQQQQ).*

The Wood Preserving Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart QQQQQ, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [March 26, 2008 (73 FR 15923)].

§113.1475. *Clay Ceramics Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart RRRRR).*

The Clay Ceramics Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RRRRR, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted December 26, 2007 (72 FR 73180)].

§113.1485. *Secondary Nonferrous Metals Processing Area Sources (40 Code of Federal Regulations Part 63, Subpart TTTTT).*

The Secondary Nonferrous Metals Processing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart TTTTT, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted December 26, 2007 (72 FR 73180)].

§113.1500. *Plating and Polishing Operations Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWWW).*

The Plating and Polishing Operations Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart WWWWW, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [September 19, 2011 (76 FR 57913)].

§113.1505. *Nine Metal Fabrication and Finishing Area Sources (40 Code of Federal Regulations Part 63, Subpart XXXXX).*

The Nine Metal Fabrication and Finishing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart XXXXXX, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted July 23, 2008 (73 FR 42978)].

§113.1510. *Ferroalloys Production Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart YYYYYY)*.

The Ferroalloys Production Facilities Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart YYYYYY, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted December 23, 2008 (73 FR 78637)].

§113.1520. *Asphalt Processing and Asphalt Roofing Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart AAAAAA)*.

The Asphalt Processing and Asphalt Roofing Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart AAAAAA, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [March 18, 2010 (75 FR 12988)].

§113.1525. *Chemical Preparations Industry Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBB)*.

The Chemical Preparations Industry Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BBBB, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted December 30, 2009 (74 FR 69194)].

§113.1530. *Paints and Allied Products Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCC)*.

The Paints and Allied Products Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCCC, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [June 3, 2010 (75 FR 31317)].

§113.1555. *Polyvinyl Chloride and Copolymers Production [Major Sources] (40 Code of Federal Regulations Part 63, Subpart HHHH)*.

The Polyvinyl Chloride and Copolymers Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHHH, is incorporated by reference as amended through November 19, 2020 (85 FR 73854) [adopted April 17, 2012 (77 FR 22848)].

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 1, 2022.

TRD-202202479

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 239-2678



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.27

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend Title 43 Texas Administrative Code, Subchapter B, §217.27 concerning personalized license plates. The amendments are necessary to clarify and modify the criteria for determining whether a personalized alphanumeric pattern is potentially objectionable under Transportation Code §504.008(e).

Section 504.008(e) authorizes the department to refuse to issue a specialty license plate with a personalized alphanumeric pattern that the director or the director's designee determines to be potentially objectionable to one or more members of the public. Section 217.27 implements §504.008(e) by setting out criteria for identifying alphanumeric patterns that may be potentially objectionable. The department has determined that the current rule needs to be less restrictive to allow personalized alphanumeric patterns that are not objectionable.

The department proposes substantive and non-substantive changes to amended §217.27.

The non-substantive changes renumber current subsections (e) - (g) as subsections (f) - (h) to accommodate renumbered subsection (e), correct spelling and grammar, revise for consistency in terms, and revise for plain English readability.

EXPLANATION.

Amended §217.27(d)(1) corrects spelling.

Amended §217.27(d)(2) deletes redundant language related to the term, "director," because this term is defined in §217.22(13); and adds "in any language" to words, phrases, or slang that may be objectionable. In the definition of "indecent," the amendment replaces "excrement" with "excreta"; modifies "bodily fluids and functions" by adding "sexual"; and adds "with the full year" to allow the alphanumeric pattern "1969." In the definitions of "vulgar" and "derogatory," the amendment adds "directly or indirectly" to specify that a reference may be directly or indirectly vulgar or derogatory. The amendment adds new criteria, "a direct or indirect negative instruction or command directed at another individual related to the operation of a motor vehicle," and deletes "reference to race, ethnicity, gender or sexual orientation whether the reference is derogatory or not." The amendment adds "direct or indirect" to certain references, such as gangs, illegal activities, controlled substances, and drug abuse; deletes the terms "violence" and "illegal drugs" as redundant. The amendment adds "direct" to qualify the term "representation of law enforcement or other governmental entities"; adds "exclusive to government" to qualify the term "public office or position"; and deletes "military or law enforcement rank or status, or any other official government position or status." The amendment adds "a pattern that could be misread by law enforcement," and deletes "deceptively similar to a military, restricted distribution, or other specialty plate."

Amended §217.27(d)(3) adds "on a license plate" to clarify that the department will not issue an alphanumeric pattern that is currently on a license plate that has been issued to another owner.

Amended renumbered §217.27(e), formerly subsection (d)(4), is renumbered to a separate subsection because the content relates to patterns the department may approve rather than patterns that may be objectionable. Renumbered subsection (e) authorizes the department to issue license plates with personalized alphanumeric patterns that refer to "military branches, military rank, military units, military equipment, or status."

Amended renumbered §217.27(f), formerly subsection (e), changes the date that begins the count of 30 days, at the end of which the executive director or the executive director's designee issues a decision on appeal of a denial. In the current rule, the count of 30 days begins after the submission of the appeal. The proposed amendment replaces "submission of" with "department receives," to clarify the starting point for the calculation of 30 days. The proposed amendments also clarify other language in subsection (f).

Amended renumbered §217.27(g), formerly subsection (f), renumbers the subsection.

Amended renumbered §217.27(h), formerly subsection (g), changes options for an applicant whose initial application for a personalized alphanumeric pattern is denied. The proposed amendment adds that the applicant "will" receive a refund, "if the denial is not appealed in accordance with subsection (f)." The proposed amendment deletes the current option of selecting a new alphanumeric pattern after an initial application has been denied. The amended subsection clarifies that an owner of a canceled license plate may choose a new personalized alphanumeric pattern for the remainder of the term of the canceled license plate, or the remainder of the term will be forfeited.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amended section will be in effect, there will be no fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal. Roland D. Luna, Sr., Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal, because the overall number of applications will not be affected.

PUBLIC BENEFIT AND COST NOTE. Mr. Luna has also determined that, for each year of the first five years the amended section is in effect, there are public benefits anticipated because the amended section provides more flexibility, allowing the department to accept alphanumeric patterns that are not objectionable.

Anticipated Costs To Comply With The Proposal. Mr. Luna anticipates that there will be no additional costs to comply with this rule because the rule does not establish any additional requirements on a regulated person.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, or rural communities, because the rule does not add new requirements on, or directly affect, small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit

an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on August 15, 2022. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §217.27 in accordance with Transportation Code §504.0011 and §1002.001.

- Transportation Code §504.0011 authorizes the board to adopt rules to implement and administer Transportation Code Chapter 504.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §504.008.

§217.27. *Vehicle Registration Insignia.*

(a) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on or kept in the vehicle for which the registration was issued for the current registration period.

(1) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle's front windshield in a manner that will not obstruct the vision of the driver, unless the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1.

(2) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate unless the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1, except that registration receipts, retained inside the vehicle, may provide the record of registration for vehicles with permanent trailer plates.

(3) If the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1, the registration receipt, symbol, tab, or other device prescribed by and issued by the department must be retained with the vehicle and may provide the record of registration for vehicles with a digital license plate. The expiration month and year

must appear digitally on the electronic visual display of the rear digital license plate.

(4) If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(A) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(B) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle's original military registration number.

(b) Unless otherwise prescribed by law, each vehicle registered under this subchapter:

(1) must display two license plates that are clearly visible, readable, and legible, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in an upright horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Transportation Code, §621.2061 may place the rear plate so that it is clearly visible, readable, and legible; or

(2) must display one plate that is securely fastened at or as close as practical to the exterior rear of the vehicle in a position not less than 12 inches from the ground, measuring from the bottom if the vehicle is a road tractor, motorcycle, trailer or semitrailer.

(c) Each vehicle registered under this subchapter must display license plates:

(1) assigned by the department for the period; or

(2) validated by a registration insignia issued by the department for a registration period consisting of 12 consecutive months at the time of application for registration, except that:

(A) trailers, semitrailers, or pole trailers not subject to inspection under §548.052(3) may obtain a registration insignia for a period consisting of 12, 24, 36, 48 or 60 consecutive months on payment of all fees for each full year of registration; and

(B) vehicles may be registered for 24 consecutive months in accordance with Transportation Code, §548.102 on payment of all fees for each year of registration, regardless of the number of months remaining on the inspection at the time of registration, provided:

(i) the vehicle receives a two-year inspection under Transportation Code, §548.102; and

(ii) the application for registration is made in the name of the purchaser under Transportation Code, §501.0234.

(d) The department may cancel any license plate issued with a personalized alphanumeric [alpha-numeric] pattern [that was issued] if the department subsequently determines or discovers that the personalized alphanumeric pattern did not comply [license plate was not in compliance] with this section [these guidelines] when the license plate was issued, or if due to changing language usage, meaning, or interpretation, the personalized alphanumeric pattern no longer complies [license plate has become non-compliant] with this section [these guidelines]. When reviewing a personalized alphanumeric [alpha-numeric] pattern, the department need not consider the applicant's subjective intent or declared meaning. The department will not issue any license plate containing a personalized alphanumeric [an alpha-numeric] pattern that meets one or more of the following criteria: []

(1) The alphanumeric [alpha-numeric] pattern conflicts with the department's current or proposed regular license plate numbering system.

(2) The director [of the department's Vehicle Titles and Registration Division] or the director's designee finds that the personalized alphanumeric [alpha-numeric] pattern may be considered objectionable. An objectionable alphanumeric pattern may include [including plate patterns that feature foreign or slang] words, [or] phrases, or slang in any language; [use] phonetic, numeric, or reverse spelling; [] acronyms; [] patterns viewed in mirror image; [] or [use a] code that [which] only a small segment of the community may be able to readily decipher. An [] that may be considered] objectionable [or misleading, including that the] pattern may be viewed as [] directly or indirectly]:

(A) indecent (defined as including a direct reference or connotation to a sexual act, sexual body parts, excreta [excrement], or sexual bodily fluids or functions. Additionally, the alphanumeric pattern "69" is [formats are] prohibited unless used with the full year (1969) or in combination with a reference to a [the] vehicle [make, for example, "69 CHEV."]);

(B) vulgar, directly or indirectly [a vulgarity] (defined as profane, swear, or curse words);

(C) derogatory, directly or indirectly (defined as an expression that is demeaning to, belittles, or disparages any person, group, race, ethnicity, nationality, gender, or sexual orientation. "Derogatory" may also include a reference [] or refers] to an organization that advocates the [such] expressions described in this subparagraph);

(D) a direct or indirect negative instruction or command directed at another individual related to the operation of a motor vehicle [reference to race, ethnicity, gender or sexual orientation whether the reference is derogatory or not];

(E) a direct or indirect reference to gangs, illegal activities, [violence,] implied threats of harm, or expressions that describe, advertise, advocate, promote, encourage, glorify, or condone violence, crime, or unlawful conduct;

(F) a direct or indirect reference to [illegal drugs,] controlled substances or [] the physiological state produced by such substances, intoxicated states, or a direct or indirect reference [references] that may express, describe, advertise, advocate, promote, encourage, or glorify such substances [items] or states;

(G) a direct representation of [] or reference to,] law enforcement [] military branches,] or other governmental entities [and their titles], including any reference to a public office or position exclusive to government [] military or law enforcement rank or status, or any other official government position or status]; or

(H) a pattern that could be misread by law enforcement [deceptively similar to a military, restricted distribution, or other specialty plate].

(3) The alphanumeric [alpha-numeric] pattern is currently on a license plate issued to another owner.

(e) [(4)] Notwithstanding the provisions of [limitations on issuance of plate patterns in] this section, [subsection,] the department may issue license plates with personalized alphanumeric patterns that refer to:

(1) a military branches, military rank, military units, military equipment, or status; or

(2) [~~publicly and privately funded~~] institutions of higher education, including military academies, whether funded privately, by the state, or by the federal government [~~by state or federal sources, or both~~].

(f) [~~(e)~~] A decision to cancel or not to issue a license plate with a personalized alphanumeric [~~alpha-numeric~~] pattern under subsection (d) of this section may be appealed to the executive director of the department or the executive director's designee within 20 days of notification of the cancellation or non-issuance. All appeals must be in writing, and the requesting party may include any written arguments, but shall not be entitled to a contested case hearing. The executive director or the executive director's designee will [~~consider the requesting party's arguments and~~] issue a decision no later than 30 days after the department receives [~~submission of~~] the appeal, unless additional information is sought from the requestor, in which case the time for decision is tolled until the additional information is provided. The decision of the executive director or the executive director's designee is final and may not be appealed to the board. An appeal to the executive director or the executive director's designee is denied by operation of law 31 days from the receipt [~~submission~~] of the appeal, or if the requestor does not provide additional requested information within ten days of the request.

(g) [~~(f)~~] The provisions of subsection (a) of this section do not apply to vehicles registered with annual license plates issued by the department.

(h) [~~(g)~~] A person whose initial application has been denied will [~~may either~~] receive a refund if the denial is not appealed in accordance with subsection (f) of this section [~~or select a new alpha-numeric pattern~~]. If an existing license plate with a personalized alphanumeric [~~alpha-numeric~~] pattern has been canceled [~~cancelled~~], the person may choose a new personalized alphanumeric [~~alpha-numeric~~] pattern that [~~which~~] will be valid for the remainder of the term, or the remaining term of the canceled license plate will be forfeited [~~forfeit the remaining term purchased~~].

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

Filed with the Office of the Secretary of State on June 30, 2022.

TRD-202202458

Elizabeth Brown Fore

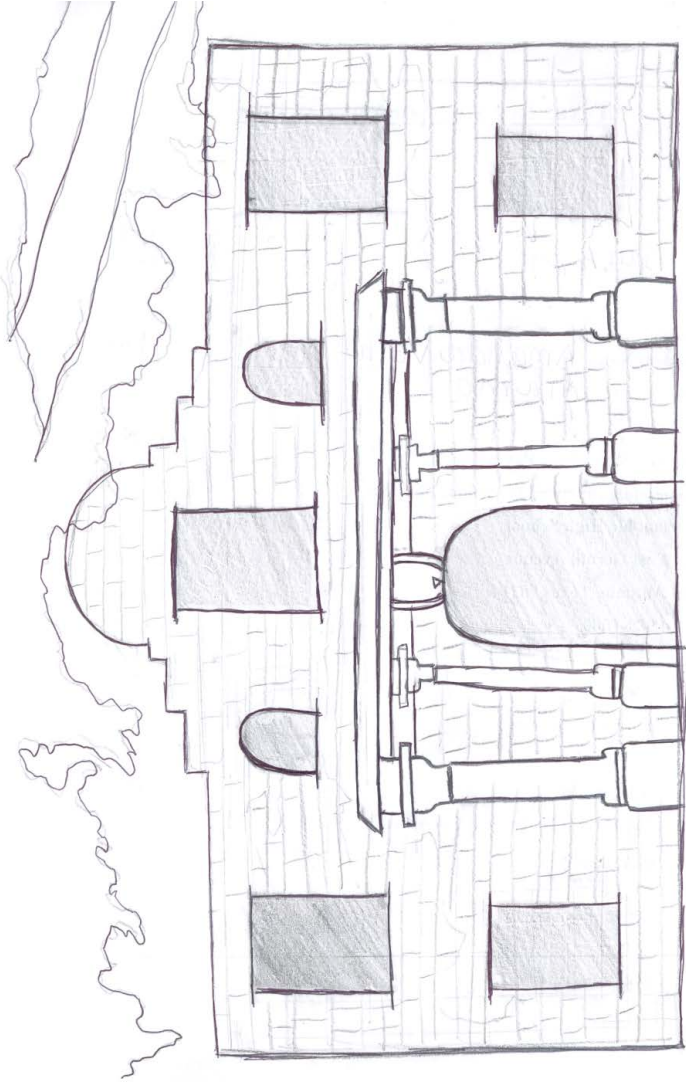
General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: August 14, 2022

For further information, please call: (512) 465-5665





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §9.26

The Railroad Commission of Texas withdraws proposed amended §9.26, which appeared in the May 20, 2022, issue of the *Texas Register* (47 TexReg 2971).

Filed with the Office of the Secretary of State on June 28, 2022

TRD-202202424

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Effective date: June 28, 2022

For further information, please call: (512) 475-1295



TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.75

Proposed amended §573.75, published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8897), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 28, 2022.

TRD-202202423



CHAPTER 577 GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER A BOARD MEMBERS AND MEETINGS--DUTIES

22 TAC §577.5

Proposed amended §577.5, published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8898), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 28, 2022.

TRD-202202425



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §215.505

The Texas Department of Motor Vehicles withdraws the emergency adoption of the amendment to §215.505, which appeared in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2387).

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202471

Elizabeth Brown Fore

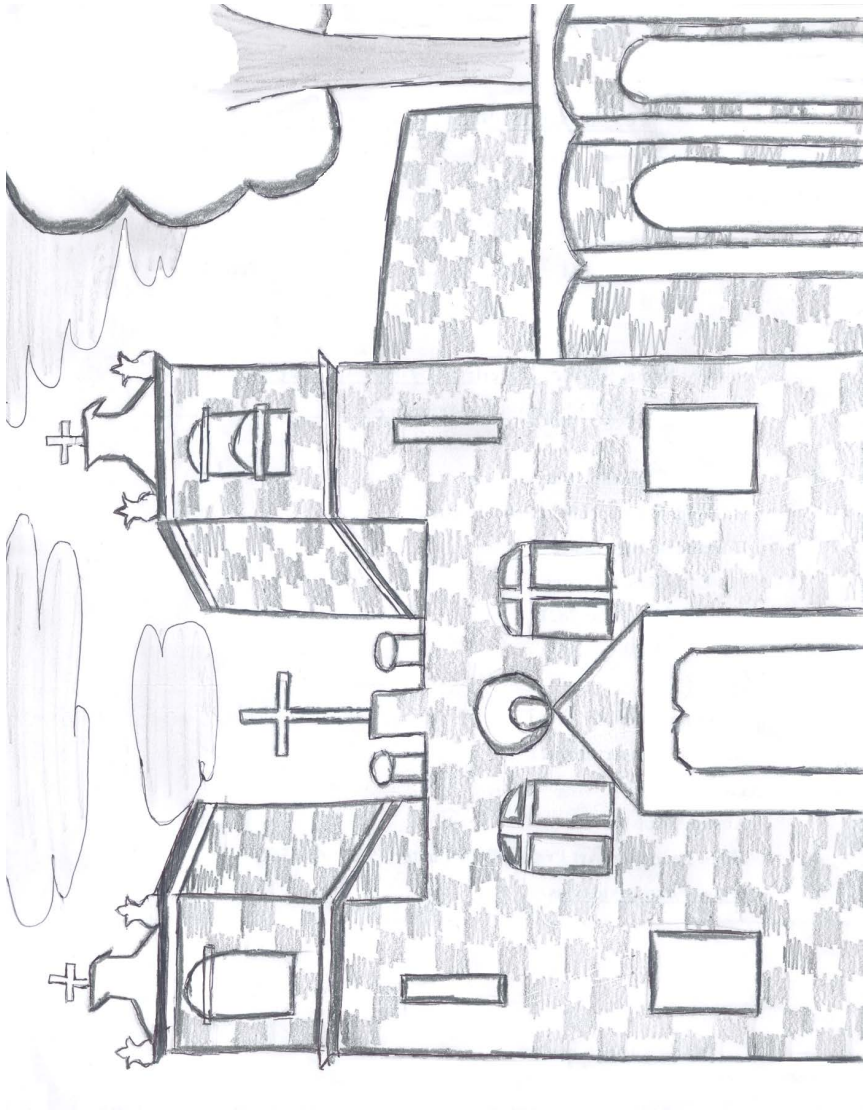
General Counsel

Texas Department of Motor Vehicles

Effective date: July 21, 2022

For further information, please call: (512) 465-5665





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.208, §1.209

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code, Chapter 1, Subchapter E, §1.208, concerning Shrimp Marketing Assistance Program Advisory Committee and §1.209, concerning Wine Industry Development and Marketing Advisory Committee. The repeals are adopted without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1552) and will not be republished.

Section 56(5) of Senate Bill 703 (SB 703), 87th Texas Legislature, Regular Session (2021) repealed Texas Agriculture Code, §§47.053 and 50B.002, which provided for the creation of a shrimp advisory committee and a wine industry development advisory committee, respectively. The repeal of Texas Agriculture Code, §§47.053 and 50B.002 necessitates repeal of corresponding rules for the Shrimp Marketing Assistance Program Advisory Committee and the Wine Industry Development and Marketing Advisory Committee.

No comments were received on the proposed repeals.

The repeals are adopted under §12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2022.

TRD-202202459

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: July 20, 2022

Proposal publication date: March 25, 2022

For further information, please call: (310) 622-5584



CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER F. TEXAS WINE MARKETING ASSISTANCE PROGRAM

4 TAC §17.200, §17.201

The Texas Department of Agriculture (Department) adopts amendments to 4 Texas Administrative Code, Chapter 17, Subchapter F, §17.200, concerning Definitions; and §17.201, concerning Wine Marketing Assistance Program. The amendments are adopted without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1552) and will not be republished.

Section 56(5) of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed Texas Agriculture Code, §50B.002, which provided for the creation of a wine industry development advisory committee. The repeal of Texas Agriculture Code, §50B.002 necessitates the repeal of corresponding rules for the Wine Industry Development and Marketing Advisory Committee (Committee).

The amendments to §17.200 remove the definition of committee, as well as definitions that are duplicative of definitions already found in 4 TAC §1.1 that apply to all Department rules. The amendments reorder a definition to place it in alphabetical order.

The amendments to §17.201 remove all references to the Committee and its responsibilities as well as make minor editorial changes.

No comments were received on the proposed amendments.

The amendments are adopted under §12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2022.

TRD-202202460

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: July 20, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 936-9360



SUBCHAPTER H. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM

The Texas Department of Agriculture (Department) adopts amendments to 4 Texas Administrative Code, Chapter 17, Subchapter H, §17.400, concerning Definitions; §17.401, concerning Shrimp Marketing Assistance Program and Advisory Committee; and the repeal of §17.402, concerning Shrimp Marketing Assistance Program Staff. The amendments and repeal are adopted without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1554) and will not be republished.

Section 56(5) of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed Texas Agriculture Code, §47.053, which provided for the creation of a shrimp advisory committee. The repeal of Texas Agriculture Code, §47.053 necessitates repeal of corresponding rules for the Shrimp Marketing Assistance Program Advisory Committee (Committee).

The amendments to §17.400 remove the definition of committee, as well as definitions that are either not used in the subchapter or that are duplicative of definitions already found in 4 TAC §1.1 that apply to all Department rules.

The amendments to §17.401 remove all references to the Committee and its responsibilities, as well as make minor editorial changes. The amendments also change the heading of this rule from "Shrimp Marketing Assistance Program and Advisory Committee" to "Shrimp Marketing Assistance Program."

Section 17.402 is repealed because it unnecessarily duplicates the text of Texas Agriculture Code, §47.054(a).

No comments regarding the amendments or repeal were received.

4 TAC §17.400, §17.401

The amendments are adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2022.

TRD-202202461

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: July 20, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 936-9360



4 TAC §17.402

The repeal is adopted under §12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2022.

TRD-202202462

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: July 20, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 936-9360



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 15, 2022, issue of the Texas Register.)

The Texas State Library and Archives Commission (commission) adopts amendments to 13 TAC Chapter 6, State Records, §6.10, Texas State Records Retention Schedules, relating to the records retention schedule for state agencies and the university records retention schedule. The amended sections are adopted with changes to the proposed text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1157). The rule will be republished.

EXPLANATION OF ADOPTED AMENDMENTS. The amendments to §6.10(a) and §6.10(b) are adopted to update, clarify, and simplify the State Records Retention Schedule (RRS) and University Records Retention Schedule (URRS) and ultimately improve retention of public records by different types of state government entities, including universities. In general, the amendments simplify and streamline both schedules by withdrawing unnecessary records series, transferring records series from the URRS to the RRS, consolidating records series when appropriate, correcting minor grammar, punctuation, and typographical errors, and improving clarity and readability of cross references, legal citations, and archives notes. In some cases, retention periods were amended to account for combined record series or to ensure consistency with applicable legal requirements and records management best practices.

SUMMARY OF COMMENTS. The commission received comments from Nohemi Ruiz with the Texas Department of Transportation, Erinn Barefield with the University of Texas Medical Branch, and Carl Haddick.

GENERAL COMMENTS:

COMMENT. One commenter made general comments about records retention and use of personal emails.

COMMISSION RESPONSE. The commission appreciates the comment, and notes that regardless of format, device, or email account used, a record is subject to retention if it was created or received by or on behalf of a state agency or an elected state

official and documents activities in the conduct of state business or use of public resources.

COMMENTS ON §6.10(b), RRS:

COMMENT. One commenter asked for clarification of the impact of the proposed change to remove "division directors" from the Archives note in Records Series 1.1.013.

COMMISSION RESPONSE. The commission confirms that calendars of division directors are not subject to archival review. Based on past questions regarding the potential archival status of division director calendars, the state archives determined that only calendar, appointment, and itinerary records of elected or appointed officials and agency heads are subject to archival review.

COMMENT. One commenter disagreed with the proposed removal of Record Center Storage Approval Forms (RMD 106) (1.2.011) from the RRS, asserting that only the commission form is obsolete and not the record itself. The commenter recommended the series remain on the schedule for those agencies and universities that have their own records center or internal storage process but remove the specific title from the series.

COMMISSION RESPONSE. The commission disagrees with the comment and declines to make the requested change. The commission determined the Record Center Storage Approval Form (RMD 106) is a TSLAC-specific form that is no longer in use; therefore, this series is unnecessary. Agencies may retain storage contracts under Contract Administration Files (5.1.001) and records storage transmittal forms under Records Transmittal Forms (1.2.006).

COMMENT. One commenter suggested that Polygraph Examination Results (3.1.043) be combined with Employment Selection Records (3.1.014) as a subcomponent of an Employment Selection Series, since part of the selection process could be polygraph testing.

COMMISSION RESPONSE. The commission disagrees with the comment and declines to make the requested change. The commission determined the cross-reference is sufficient and is consistent with the other cross-references in the remarks of Employment Selection Records (3.1.014).

COMMENT. One commenter disagreed with the proposed addition of research protocols to Hazardous Materials - Administrative Records (5.4.015), stating that it confuses the original purpose for the series and recommends removing the citation added to record series.

COMMISSION RESPONSE. The commission agrees with most of the comment related to this record series. The commission removed the newly added citation, Health and Safety Code, Section 502.005(d), because it is already listed under Workplace Chemical Safety Lists (5.4.009). Research protocols was proposed to be added to the records series description during the informal comment period. Universities were previously required to retain research protocols regarding hazardous compounds for 30 years under the record series Carcinogenic Compounds Research Use Records - Administrative (14.1.001). That series was removed from the URRS. Therefore, adding research protocols to Hazardous Materials - Administrative Records (5.4.015) ensures continued retention and eliminates redundancy.

COMMENTS ON §6.10(b), URRS:

COMMENT. One commenter made 49 non-substantive comments regarding potential typographical errors, formatting errors, wording, and consistency.

COMMISSION RESPONSE. The commission appreciates the comments and has made some, but not all, corrections, as necessary.

COMMENT. One commenter suggested that a cross-reference to Award Administration and History Records (11.1.003) should be added to Records Series Award Selection Records (11.1.004).

COMMISSION RESPONSE. The commission appreciates the comment and has resolved all cross-reference inconsistencies.

COMMENT. One commenter disagreed with combining External Committee Records (11.1.008) with University Committee Records (11.1.015). The commenter stated that combining the two series would make the series unmanageable.

COMMISSION RESPONSE. The commission disagrees with the comments. External Committee Records (11.1.008) was withdrawn because those documents are not university records. University committee members may retain relevant records under University Committee Records (11.1.015). However, the commission removed "participant notes" from the record description for University Committee Records (11.1.015), as the commenter is correct that participant notes are not official committee records.

COMMENT. One commenter disagreed with deleting Photographs, Audiovisual Recordings, and Other Non-Textual Media (11.1.011) and recommended it be moved to the RRS as a catch-all for photographs that may not relate to any other record category. In the alternative, the commenter suggested that if the series is removed, references to photographs or other audiovisual recordings should be incorporated into many other records series to ensure the series is not being lost and the records are actually being captured and maintained properly. The commenter also asks whether a note about accidental or transitory photographs should be added to the description for transitory records.

COMMISSION RESPONSE. The commission declines to make the requested change at this time and believes the existing record series Subject Files - Media and Communications (11.1.014) is sufficient. However, the commission added an additional cross-reference to Transitory Information (1.1.057) for unusable materials in Subject Files - Media and Communications (11.1.014). The commission will consider adding a series to the RRS or expanding the description for Public Relations Records (1.1.019) in the future.

COMMENT. One commenter disagreed with combining University and Academic Leadership Meeting Records (11.1.016) with University Committee Records (11.1.015) stating the types of meetings covered by 11.1.016 are not committee meetings and should not be treated as such. The commenter also suggested that this category be moved to the RRS and a new series should be created for the URRS to accommodate regular staff meetings.

COMMISSION RESPONSE. The commission disagrees with the comment and declines to make the change to the URRS. Records from non-committee meetings fall under Staff Meeting Minutes and Notes (1.1.063). The commission has revised the change explanation to provide better guidance about where to classify university staff/committee meetings as follows: *Division director meetings at TSLAC are classified under 1.1.063. If*

high level planning or administrative decisions are conducted, those records would be classified under Correspondence, Administrative (1.1.007) or Plans and Planning Records (1.1.024). The commission cannot overprescribe retention of records. State agencies may decide to create a custom record series for leadership meetings rising higher than 1.1.063, but lower than meetings captured by Meetings, Agendas and Minutes of Open (1.1.058).

COMMENT. One commenter noted that a document posted on the commission's website indicating changes made noted Admissions/Enrollment Reports (15.5.002) was being withdrawn, but that the series did not appear to be withdrawn on the actual schedule. If the series was proposed to be withdrawn, the commenter disagrees.

COMMISSION RESPONSE. The commission appreciates the comment and corrected the error on the change explanation list. The commission determined not to withdraw based on informal feedback.

COMMENT. One commenter asked why the citation to 22 TAC 681.41(r) was removed from Mental Health Counseling Records (16.1.008) if the rule is still the basis for the retention period.

COMMISSION RESPONSE. The commission removed the citation because it applies to licensees not employed by agencies or institutions that maintain client records. However, the citation provides a useful benchmark for industry standards.

COMMENT. One commenter recommended removing "quarterly" from the description in Laboratory Inspection Records-Calibration Records (16.1.020) to avoid confusion or conflicts with actual requirements. The commenter also recommended adding a cross reference to other calibrations.

COMMISSION RESPONSE. The commission agrees with the comment and substituted "regular" for "quarterly" and added a cross-reference to Calibration Records (Equipment or Instrument) (5.2.005).

COMMENT. One commenter recommended removing "master schedules" from the description for Medical Logs (16.1.024) to avoid confusion with other scheduling series and updating the description for the series for general use by universities.

COMMISSION RESPONSE. The commission agrees with the comment and revised the description for 16.1.024 by broadening the language and removing the reference to potentially confusing "schedules."

COMMENT. One commenter recommended generalizing and clarifying the descriptions of Medical Records-Hospital (16.1.025) and Medical Records-Student Health Clinic (16.1.026) to avoid confusion with other related series on the URRS by removing "x-ray," "sheets," and "forms," and using a substitute description for the series that removes the phrase, "may include but is not limited to."

COMMISSION RESPONSE. The commission agrees with some of the comments and revised the records series descriptions of 16.1.025 and 16.1.026 as advised by removing "x-ray" and redundant uses of "sheets" and "forms." However, the commission declined to use the substitute description since the phrase "may include but is not limited to" implies that the list is not exhaustive.

COMMENT. One commenter recommended clarifying the AC remark for Medical Records-Hospital (16.1.025), Records-Student Health Clinic (16.1.026), and Psychotherapy Notes (16.1.034) to

make it clear that the retention trigger is client's 21st birthday or 7 years after termination of services with client.

COMMISSION RESPONSE. The commission revised the AC remark for 16.1.025, 16.1.025, and 16.1.034 to improve clarity of the retention period and retention trigger.

COMMENT. One commenter recommended removing "as required by federal law and regulations, state law, and the rules of the TSBP" from the description for 16.1.031a stating it is assumed the record keeping requirements are set due to legal citations.

COMMISSION RESPONSE. The commission disagrees with the comment and declines to make the change. The descriptive language emphasizes that other laws or regulations may contain important information about the types of records included in series and should be consulted as necessary.

COMMENT. One commenter recommended reclassifying records series and changing the records series item numbers (RSIN) of 16.1.027, 16.1.036, and 16.1.037 under Section 15.2 - Academic Records stating that these are residency records and not medical records under Section 16.1 - Health and Counseling Records.

COMMISSION RESPONSE. The commission declines to make changes to the referenced series in response to this comment. The commission believes the series are appropriate as currently drafted.

COMMENT. One commenter recommended adding "chart reviews" to the description for Quality Assurance Records-Health Services (16.1.035) to ensure chart information is being entered properly regarding the patient care.

COMMISSION RESPONSE. The commission agrees with this comment and added "chart reviews" to the description for 16.1.035.

COMMENT. One commenter submitted two comments recommending changes to Residents/Fellows Training Completion Records (16.1.037) by revising the title through removal of the word "Completion," using the term "Physician in Training (PIT)," clarifying the description, and adding a condition to the AC remark for those that do not complete training.

COMMISSION RESPONSE. The commission mostly agrees with this comment and revised the title to Physician in Training (PIT) Completion Records. The commission also revised the title Resident Physician Formative Evaluations (16.1.036) to Physician in Training (PIT) Formative Evaluations (16.1.036). The commission clarified the descriptions for both series and updated the AC definition to include, "or last date of training, as applicable." The commission declined to remove "Completion" from the title of 16.1.037 to differentiate the series from 16.1.036.

COMMENT. One commenter recommended revising Medical Source Data (16.1.038) to include a cross reference to Medical Records-Hospital (16.1.025) and Medical Records - Student Health Clinic (16.1.026) for the official written interpretation of the source data.

COMMISSION RESPONSE. The commission agrees with the comment and added the cross-reference to 16.1.038.

COMMENT. One commenter recommended increasing the retention period for Surgical Instrument Sterilization Records (16.1.041) from two years to three years or combining with

Quality Assurance Records-Health Services (16.1.035), which also has a retention of three years.

COMMISSION RESPONSE. The commission disagrees with the comment and declines to make the suggested changes at this time. The retention period for Surgical Instrument Sterilization Records was changed from three to two years to be consistent with Quality Control Reports (5.2.018) on the RRS. The commission decided not to combine 16.1.035 and 16.1.041 because 16.1.035 is related to health services, and 16.1.041 is related to a separate issue of equipment sterilization. In addition, after further review and partly in response to the issues raised by this comment, the retention period of Quality Assurance Records-Health Services (16.1.035) is being reduced to two years for consistency with the other quality control monitoring records series.

COMMENT. One commenter disagreed with combining Equipment Checkout Records (16.2.005) with Circulation Records (16.2.001) stating circulation is a library term not associated with the use/return of equipment and recommended moving 16.2.005 to the RRS for use by universities and state agencies.

COMMISSION RESPONSE. The commission disagrees with the comment and declines to make the requested changes. Libraries typically include equipment to be checked out in the library catalog. For clarity, the commission revised the description for 16.2.001 to include equipment. Since 16.2.001 is not intended for checkout of non-library equipment, the commission also revised the description for Inventory and Property Control Records (5.2.006) to include non-library equipment checkout records.

COMMENT. One commenter noted there was not a retention period listed for Library Materials Control Records (16.2.009).

COMMISSION RESPONSE. The commission appreciates the comment and fixed this error. The previous and current retention period for 16.2.009 is AC where AC = Catalog updated.

COMMENT. One commenter asked why the retention period for 16.2.012 is AV if the description includes "general correspondence," which has a two-year retention period under Correspondence, General (1.1.008).

COMMISSION RESPONSE. The commission appreciates the comment. To improve clarity, the commission removed "general email correspondence" from the description for 16.2.012 as it is redundant with "correspondence," also listed in the description. The retention period for general correspondence under 1.1.008 applies to correspondence that does not readily fall within other record series.

COMMENT. One commenter asked about the reasoning for a three-year retention period for 16.3.004 when the legal citation referenced does not list a retention requirement for the final report, only for fire statistics.

COMMISSION RESPONSE. If a report is particularly important or common for universities, are associated with legal requirements specific to universities, or if it would not be obvious that a record fits into an RRS series like non-fiscal reports, it is most appropriate for the URRS to include a series appropriate for those reports. During the informal comment period, discussion supported keeping a series for annual fire reports. Because statistics related to the report must be kept for the three most recent calendar years, the commission deemed it appropriate to maintain reports based on those statistics for three years as well.

COMMENT. One commenter asked about the reasoning behind the seven-year retention period for Campus Fire Log and Statistics (16.3.005).

COMMISSION RESPONSE. The retention period for this record series has been seven years since the first edition of the URRS was adopted in 2019. The retention period for fire statistics is seven years due to Clery Act reporting requiring all supporting records used in compiling the annual report be maintained for three years after submission, and each annual report contains data from the previous three years, resulting in a potential total retention period of seven years.

COMMENT. One commenter recommended standardizing references to the Clery Act in the descriptions for Clery Act Reporting-Annual Security Report (16.3.010), Clery Act Reporting-Crime Log and Statistics (16.3.011), and Clery Act Reporting-Emergency Response and Evacuation Procedures (16.3.013).

COMMISSION RESPONSE. The commission appreciates the comment and has revised the descriptions of 16.3.010, 16.3.011, and 16.3.013 to read "pursuant to the Clery Act."

COMMENT. One commenter recommended combining 16.3.004 and 16.3.010 into one series and combining 16.3.005 and 16.3.011 into one series stating they essentially have the same title, retention, and legal citation references.

COMMISSION RESPONSE. The commission declines to combine the record series at this time. The commission explored the possibility of combining fire and crime reporting series but decided to keep the series separate. If additional information that supports combining these series comes to light in the future, the commission will consider combining the series at that time.

COMMENT. One commenter disagreed with withdrawing Fire Alarm and Drill Records (16.3.025) and stated fire alarm and drill records are misclassified under Safety Inspection Records (5.4.003) because fire drill records are not inspections. The commenter recommended classifying fire drill records under a different series on the RRS or keeping it as a broad emergency drills/response standalone series and classifying fire alarm records under Campus Fire Statistics (16.3.006), which was withdrawn, or Emergency Response and Recovery Records (5.4.017).

COMMISSION RESPONSE. The commission disagrees with the comments and declines to make the changes. The description language in RSIN 5.4.003 is currently broad enough to include all safety and emergency drills. The commission further revised the title, AC Definition, and description for Safety, Drill, and Inspection Records (5.4.003) to further clarify the series. The commission does agree with the commenter that fire alarm records would be classified under a different series, either Campus Fire Log and Statistics (16.3.005) or Emergency Response and Recovery Records (5.4.017), depending on whether a fire occurred.

COMMENT. One commenter recommended adding "and other state vehicles" to the description for GPS Tracking Records (16.3.026) as to not limit GPS monitoring devices to police vehicles, making the series more generic for wider use.

COMMISSION RESPONSE. The commission agrees with comment and added the language to the description of 16.3.026. The commission will consider the possibility of adding a series to the RRS for GPS Tracking Records in the future.

COMMENT. One commenter noted a missing AC Definition for Missing and Unidentified Persons Files (16.3.033).

COMMISSION RESPONSE. The commission appreciates the comment and fixed the error. The AC definition now reads AC = Date person located or body identified.

COMMENT. One commenter noted there were two records series with the same RSIN and title, Offense Records-Class A and B Misdemeanors and State Jail Felonies (16.3.035), but different retention periods.

COMMISSION RESPONSE. The commission appreciates the comments and fixed this formatting error. There are two separate series for Offense Records-Class A and B Misdemeanors and State Jail Felonies (16.3.035) and Offense Records-Class C Misdemeanor (16.3.036).

COMMENT. One commenter recommended adding new records series addressing juvenile case files instead of adding references to Family Code 58.264(b) for retention guidance on offense records in the following series: Offense Records-Class A and B Misdemeanors and State Jail Felonies (16.3.035), Offense Records-Class C Misdemeanor (16.3.036), Offense Records-First-Degree and Capital Felonies (16.3.037), Offense Records-Second- and Third-Degree Felonies (16.3.038), and Police Audiovisual Recordings (16.3.044).

COMMISSION RESPONSE. The commission appreciates the comment but declines to make the change at this time. The commission will research and consider adding juvenile records to the URRS after seeking feedback from universities on volume of juvenile cases dealt with by university police departments. The reference to Family Code 58.264(b) remains to provide guidance in the meantime.

COMMENT. One commenter recommends withdrawing Weapons Records-Disposition (16.3.052) and combining with Inventory and Property Control Records (5.2.006), stating the description for the latter lists the disposal of supplies, equipment, and property.

COMMISSION RESPONSE. The commission disagrees with the comment and declines to make the change. The commission prefers to keep records series on the URRS that are specific to universities for ease of use, or if it would not be obvious that a record fits into a RRS series like general equipment records.

COMMENT. One commenter recommends adding the term "weapons" to the description for Inspection, Repair, and Maintenance Records - Equipment (5.2.008) and Inventory and Property Control Records (5.2.006) if Weapons Records - Inspection and Repair (16.3.053) and Weapons Records - Inventory (16.054) are withdrawn.

COMMISSION RESPONSE. The commission appreciates the comment. Rather than make the requested change, the commission instead is withdrawing the proposed amendment to withdraw the weapon records series 16.3.053 and 16.3.054 for consistency and to keep records series on the URRS that are specific to universities for ease of use.

COMMENT. One commenter asks why Equipment Checkout Records (16.2.005) was withdrawn and Weapons Records - Issuance (16.3.055) remains and recommends making 16.3.055 a checkout/issuance catchall series. The commenter additionally states there is an inconsistency with how weapons are handled by the retention schedule-some series remain on the URRS and others are withdrawn and point to classification on the RRS.

COMMISSION RESPONSE. The commission declines to make the change to 16.3.055. However, as noted in the response

to the comment above, the commission is withdrawing the proposed amendment to withdraw the weapon records series 16.3.053 and 16.3.054 for consistency and to keep records series on the URRS that are specific to universities for ease of use.

COMMENT. One commenter submitted three comments recommending the removal of the reference to the citation from the descriptions for Childcare Center Records (16.5.004), Childcare Center Records-Licensing, Safety, and Compliance (16.5.006), and Broadcast Station Public Inspection File (18.1.004) stating there are many series requiring maintenance of a list of records per a legal citation and the citation, therefore, is not necessary in the description.

COMMISSION RESPONSE. The commission disagrees with the comment and declines to make the requested change. Description language is intended to imply that citations contain additional useful information about what types of records are included in series.

COMMENT. One commenter recommended adding a caution note to the remarks for Course Records (17.1.009) stating there is a possible need to hold these records longer due to tenure review requirements.

COMMISSION RESPONSE. The commission agrees with the comment and added a cross reference to both Student Faculty/Course Evaluation Records-Non-Tenure Track Faculty (17.1.018) and Student Faculty/Course Evaluation Records-Tenure Track Faculty (17.1.019).

COMMENT. One commenter noted the track changes Word document shows Student Faculty/Course Evaluation Records Tenure Track Faculty (17.1.019) is still being withdrawn; however, it is listed on the URRS.

COMMISSION RESPONSE. The commission appreciates the comment and fixed this error on the tracked changes reference document and the URRS document.

COMMENT. One commenter recommended updating Animal Breeding and Management Records (17.3.001) to include when a veterinarian is on staff as the person handling and taking care of the animals stating there are additional longer retention requirements for those individuals under 22 TAC 573.52(b)(1).

COMMISSION RESPONSE. The commission declines to make the requested change at this time but will further research the comment and consider increasing the retention period to AC+5 with a new legal citation in a future update to the URRS.

In addition to the changes from the above comments, the Commission identified and made non-substantive grammatical and typographical changes to the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.185, which authorizes the commission to prescribe by rule a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court. In addition, the amendments are adopted under Government Code, §441.199, which authorizes the commission to adopt rules it determines necessary for cost reduction and efficiency of recordkeeping by state agencies and for the state's management and preservation of records.

§6.10. *Texas State Records Retention Schedules.*

(a) A record listed in the Texas State Records Retention Schedule (Revised 5th Edition) must be retained for the minimum retention

period indicated by any state agency that maintains a record of the type described.

Figure: 13 TAC §6.10(a)

(b) A record listed in the Texas State University Records Retention Schedule (2nd Edition) must be retained for the minimum retention period indicated by any university or institution of higher education.

Figure: 13 TAC §6.10(b)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202413

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: July 18, 2022

Proposal publication date: March 11, 2022

For further information, please call: (512) 463-5460



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 16 TAC §9.52(g)(1) and 16 TAC §9.403(a) are not included in the print version of the Texas Register. The figure are available in the on-line version of the July 15, 2022, issue of the Texas Register.)

The Railroad Commission of Texas (Commission) adopts amendments to the following rules in Subchapter A, General Requirements: §9.2, Definitions; §9.6, License Categories, Container Manufacturer Registration, and Fees; §9.7, Applications for Licenses, Manufacturer Registrations, and Renewals; §9.8, Requirements and Application for a New Certificate; §9.10, Rules Examination; §9.16, Hearings for Denial, Suspension, or Revocation of Licenses, Manufacturer Registrations, or Certificates; §9.22, Changes in Ownership, Form of Dealership, or Name of Dealership; §9.51, General Requirements for LP-Gas Training and Continuing Education; §9.52, Training and Continuing Education; §9.54, Commission-Approved Outside Instructors; and adopts new §9.20, Dispenser Operations Certificate Exemption; and §9.55, PERC-Based Training.

In Subchapter B, LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements, the Commission adopts amendments to §9.126, Appurtenances and Equipment; §9.130, Commission Identification Nameplates; §9.134, Connecting Container to Piping; §9.140, System Protection Requirements; §9.141, Uniform Safety Requirements; §9.142, LP-Gas Container Storage and Installation Requirements; and §9.143, Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

In Subchapter C, Vehicles, the Commission adopts amendments to §9.202, Registration and Transfer of LP-Gas Transports or Container Delivery Units, and §9.211, Markings.

In Subchapter E, Adoption by Reference of NFPA 58 (LP-Gas Code), the Commission adopts amendments to §9.403, Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

The Commission adopts the following rules with changes from the proposed text as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 2971): §§9.2, 9.7, 9.8, 9.10, 9.20, 9.51, 9.52 and its corresponding table, 9.55, 9.126, 9.140, 9.143, and the table in §9.403(a). These rules will be republished.

The Commission adopts §§9.6, 9.16, 9.22, 9.54, 9.130, 9.134, 9.141, 9.142, 9.202, and 9.211 without changes from the proposed text as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 2971). These rules will not be republished.

The proposed amendment in §9.26 is withdrawn because the Commission no longer seeks to amend §9.26.

The rules adopted with changes due to public comments are discussed below.

The Commission received 14 comments on the proposed new rules and amendments. Two comments were submitted by members of the legislature, two comments were submitted by associations (the Texas Propane Gas Association (TPGA) and the Texas Retailers Association (TRA)), two comments were submitted by companies, and eight comments were submitted by individuals.

AmeriGas Propane and four individuals asked that the Commission remove the 24-hour emergency number requirements from proposed §9.7 because it is not applicable to all types of licenses, particularly those that do not have hazard exposure. The Commission agrees that the requirements for 24-hour emergency numbers should remain in existing §9.140, relating to System Protection Requirements. Thus, the Commission adopts §9.7 and §9.140 with changes to keep 24-hour emergency number requirements in §9.140.

The Honorable Senator Bryan Hughes, the Honorable Representative John Raney, AmeriGas, TRA, TPGA, Tractor Supply Company and two individuals submitted comments on proposed new rule §9.20, proposed as "DOT Cylinder Filler Certificate Exemption." These commenters noted that both DOT cylinder filling and motor/mobile fuel filling are covered by the Propane Education & Research Council (PERC) Dispensing Propane Safely Course and that the certificate exemption in §9.20 should not be limited to DOT cylinder filling. The Commission agrees and adopts §9.20 and §9.55 with changes to allow the certificate exemption to authorize an individual to conduct both DOT cylinder filling and motor/mobile fuel filling. This change is reflected in the new title of §9.20, which is "Dispenser Operations Certificate Exemption." The title change is incorporated in references within §9.20 as well as references to §9.20 in the following rules: §§9.2, 9.8, 9.51, 9.52, and 9.55. Section 9.20 is also adopted with a change to correct the PERC course title to "Dispensing Propane Safely." AmeriGas, TRA, and Tractor Supply asked that §9.20 include a requirement that the Commission send certificates within 10 days of receiving a complete certificate exemption application submitted under §9.20. The Commission declines to add this requirement because circumstances sometimes prevent applications from being processed in that timeframe. However, the

Commission notes that Alternative Fuels Safety (AFS) staff strive to send certificates within 10 days.

Regarding §9.52, AmeriGas, TPGA, and four individuals submitted comments requesting the Commission continue to allow CETP courses as an option for managers to fulfill continuing education requirements. The Commission disagrees because CETP courses do not include information on Commission rules, with which managers must be familiar. The Commission notes that Commission continuing education courses are only required every four years and are offered online at no charge.

Another individual submitted a comment about §9.52 stating that manager certification should be open book and managers should not be required to take the 80-hour course. This comment is not relevant to the current rulemaking because that provision of §9.52 was not included in the proposed amendments.

The Commission received several comments about new §9.55, proposed as "PERC-Based Outside Instructor Training." First, two individuals asked that the Commission not adopt §9.55 and just use PERC guidelines. The Commission disagrees. Section 9.55 incorporates the requirements of Senate Bill 1668. Senate Bill 1668 added Texas Natural Resources Code section 113.0955, which requires the Commission to waive its certification requirements for an individual who completes training consistent with the guidelines established by PERC and complies with certain examination requirements. Senate Bill 1668 also requires the Commission to waive certification requirements for an individual who completes an examination that uses PERC training and examination materials and submits proof of completion of the examination to the Commission.

The Commission also received comments from the Honorable Senator Bryan Hughes, the Honorable Representative John Raney, AmeriGas, TRA, TPGA, and Tractor Supply Company regarding §9.55. These commenters agreed that §9.55 as proposed did not reflect the intent of Senate Bill 1668, which was to simplify the process for obtaining a certificate by allowing training and examination outside the Commission using approved PERC content. The comments asked the Commission to remove the outside-instructor certification process and replace with a process to allow approval of courses and exams based on PERC content. The Commission agrees and adopts the rule with several changes. First, the title of the rule has changed to "PERC-Based Training." The rule as adopted states that AFS may award training and certification or continuing education credit to DOT cylinder filling or motor/mobile fuel filler employee-level applicants and certificate holders for PERC-based courses administered by a company provided the company complies with the requirements of this section. One individual commented that §9.55 should only apply to licensed companies. The Commission disagrees. Section 9.55 as adopted incorporates suggestions from TPGA, AmeriGas, and one individual that approved companies (both licensees and non-licensees) should be eligible to conduct PERC-based training courses.

Under §9.55 as amended, a company who seeks to administer a PERC-based course shall submit the PERC-Based Training Application. This new form was proposed at the Commission's June 7, 2022 open meeting separately from the proposed rulemaking. At the time, it was proposed as an outside instructor application. However, the new form adopted concurrent with §9.55 is amended to reflect changes made to the rule. An applicant must also submit the course curriculum and examination materials for AFS approval. The curriculum must be consistent with the guidelines established by the PERC Dispensing Propane Safely

Course and shall also include training on the requirements of Commission rules listed in §9.20(4). The remaining changes adopted in §9.55 remove references and requirements applicable to outside instructors and further simplify the section. For example, the adopted version of §9.55 still allows for complaints to be submitted about PERC-based courses; however, the adopted version references an existing complaint process in §9.54 rather than including the process in §9.55.

Regarding §9.126 and §9.143, AmeriGas, TPGA, and five individuals asked that the Commission allow the use of electric actuators on both internal and ESV valves. The Commission agrees and has added "electrically-actuated" alongside "pneumatically-actuated" in both §9.126 and §9.143.

Two individuals submitted comments about proposed §9.134, which removes the requirement for a licensee to submit LPG Form 22 if the piping system is currently in service and no new piping is installed, the system is in good working order, and the installer cannot be determined. One comment appeared to be in favor of the changes. Another individual asked that the requirement be retained because it protects the licensee and notifies the Commission of a potential rule violation. The Commission disagrees because filing a Form 22 does not prompt an investigation if the installer is unknown. The Commission notes that a licensee can keep a similar record if such a record protects the licensee.

The Commission received seven comments on §9.140 --one from TPGA, one from AmeriGas and five from individuals. TPGA, AmeriGas, and four individuals requested that the Commission not require additional crash protection for DOT cylinders in the horizontal position unless the cylinders are located in areas frequented by the public. The Commission agrees and has made corresponding changes to §9.140(g). One individual requested that the Commission exempt Manchester crash ring vertical tanks from additional crash protection requirements. The Commission notes that Manchester has an exception on file that allows for the crash ring referenced in the comment to be installed. Another individual requested that the Commission add language to §9.140 to identify the diameter of the hole required to concrete a vertical crash post into the ground. The Commission declines to make this change as this provision was not included in the proposed amendments to §9.140.

Regarding §9.143, AmeriGas, TPGA, and four individuals asked that the Commission allow the use of engineered breakaways as an additional safety option for piping and valve protection on stationary LP-gas installations. The Commission agrees and adopts §9.143 with changes in subsection (e)(7)(E) to allow engineered breakaways meeting certain requirements.

The last comments relate to §9.403 and the table incorporated in that section. One individual asked that the Commission move toward adopting the 2020 version of the National Fire Protection Association (NFPA) standards. The Commission will consider these changes in a future rulemaking. TPGA asked that in the table included in §9.403, regarding NFPA section 6.29.3.2, the language that installations shall comply with the requirement "prior to" September 1, 2022 be changed to "by" September 1, 2022. The Commission agrees and has made the requested change in the table.

Finally, the Commission adopts §9.10 with a change in subsection (c)(4)(F) to clarify that an individual paying a fee for a testing or proctoring service may submit that fee to the testing or proctoring service or to the Commission, depending on the testing

or proctoring service's payment processes. This change will go into effect September 1, 2022 to allow testing/proctoring services and the Commission time to alter systems as necessary to accept these fees.

The Commission adopts the amendments and new rules to incorporate provisions of Senate Bill 1582 (SB 1582) and Senate Bill 1668 (SB 1668), both enacted during the 87th Texas Legislative Session (Regular Session, 2021). Additional amendments are adopted as discussed in the following paragraphs.

Senate Bill 1668 added Natural Resources Code section 113.0955, which requires the Commission to waive its certification requirements for an individual who completes training consistent with the guidelines established by the Propane Education & Research Council (PERC) and complies with certain examination requirements. To incorporate this exemption, the Commission adopts amendments to the following rules: the definition of "certificate holder" in §9.2(5)(E) to include in the definition a person who holds a current Dispenser Operations certificate exemption; §9.8 to add new subsection (d) stating that an applicant for a new Dispenser Operations certificate exemption shall comply with requirements of new §9.20, which describes how an individual may apply for a Dispenser Operations certificate exemption.

New §9.20 provides two processes through which an individual may obtain the Dispenser Operations certificate exemption created by SB 1668. First, an individual may complete training and examination directly with PERC. An applicant for an exemption pursuant to this process in §9.20(1) must submit new LPG Form 16P, which was proposed at the Commission's June 7, 2022 open meeting. The new form will be adopted concurrently with §9.20 and incorporates changes needed to address those made in the rule, as discussed above. The applicant must also provide confirmation from PERC that the individual completed the PERC "Dispensing Propane Safely" course and corresponding examination. New §9.20(1)(A)(ii)(III) states an effective date of July 18, 2022, which is the date the amendments will go into effect.

The second process through which an individual may obtain the Dispenser Operations certificate exemption is adopted in §9.20(2). This process requires an individual to complete an approved PERC-based course in accordance with §9.55.

New §9.20(3) - (10) specify additional requirements for individuals who receive the certificate exemption. New §9.20(4) requires that individuals who are issued the exemption comply with certain Commission rules, which are not covered by the PERC Dispensing Propane Safely course.

Other related amendments in §9.51(b) and (d)(4) and §9.52(a)(2)(C)(iv) add references to the Dispenser Operations certificate exemption, and new §9.52(h) provides continuing education credit for completion of a PERC-based course. This is also reflected in changes to the Figure in §9.52(g)(1).

Finally, as addressed above, new rule §9.55 contains the requirements for administering a PERC-based training course such that an individual who takes those courses and examinations is eligible for the Dispenser Operations certificate exemption.

Senate Bill 1582

Senate Bill 1582 amended Natural Resources Code sections 113.087 and 113.088 to provide for licensing and registration examination to be performed by a proctoring service. The bill also removed the requirement that a testing service that administers

an examination collect a nonrefundable examination fee on behalf of the Commission. The Commission adopts amendments in §9.10(c)(1)(c) to incorporate the use of an online testing or proctoring service and in subsection (c)(4)(F) to ensure individuals who register for an examination to be administered by a testing or proctoring service pay any required fee required by the testing or proctoring service in addition to paying the examination fee to the Commission. Subsection (c)(4)(F) is adopted with a clarifying change as well as a specific effective date as discussed above.

House Bill 2714 (86th Legislature, 2019)

The Commission proposed an amendment in §9.26(a) pursuant to House Bill 2714 from the 86th Legislative Session regarding manufacturer registration. The Commission finds that the proposed wording is not needed and therefore withdraws the change as proposed in §9.26(a).

Other Adopted Amendments

In §9.2, the Commission adopts removing the definitions of "Advanced field training (AFT)" and "AFT materials." The Commission also removes AFT requirements and references throughout the chapter because AFT is no longer required. These amendments are adopted in §§9.8, 9.52, and 9.54. The Commission also removes the definition of "repair to container" in §9.2 and instead adopts clarification regarding cylinder repair in §9.6(e). Changes made to or maintenance of a cylinder or cargo tank excluded from the definition of repair in 49 CFR §§180.203, 180.403, and 180.413 do not require a license. In §9.6(b)(14) the Commission adds a reference to 25 horsepower, and in §9.6(d) adds "subframing," both of which were inadvertently omitted from previously adopted amendments in Chapter 9.

The Commission adopts new §9.7(i) with a change from the proposal so that the text from §9.140 regarding specific standards for a 24-hour emergency telephone number is no longer included as part of the Commission's licensing requirements. The Commission adopts the addition of "A2" in §9.7(m)(2) because this license category was inadvertently omitted from previously adopted amendments in Chapter 9. New subsection (m)(3) is adopted to ensure the license categories repairing or testing ASME containers are filing the correct certificate of authorization from ASME and to address situations in which ASME is unable to issue authorization prior to a license expiration date.

The Commission adopts a change in §9.10(d)(1)(G) to clarify that the Recreational Vehicle Technician examination qualifies an individual to install and repair appliances on recreational vehicles in addition to the activities listed in existing subsection (d)(1)(G). In §9.16(e)(3), §9.22(a)(2), and §9.130, the Commission corrects references to AFS and removes requirements for mailing; and in §9.10, §9.51 and §9.52(e) and (f) adopts clarifying changes regarding AFS scheduling and registration for courses to reflect current Commission practice.

The Commission removes outdated tables from §9.52(h) and adopts changes to list available continuing education courses in §9.52(e) and (f). Adopted changes in §9.52(i), renumbered as subsection (g), clarify that CETP courses are now only offered for employee-level certificate holders. These changes are also reflected in the new Figure in §9.52(g)(1).

In §9.126 and §9.143, the Commission changes references from pneumatically-operated to pneumatically-actuated because pneumatically-actuated valves can be operated automatically

or manually through the use of cables. The Commission also adopts these sections with changes to incorporate "electrically-actuated" as requested in comments. In §9.134, the Commission adopts new subsection (d) to address situations where LPG Form 22 is required but an LP-gas licensee does not know who the previous installer was. In §9.140(g), the Commission adopts new wording to address protection for cylinders in the horizontal position. These protection requirements are adopted with a change due to comments. Cylinders in the vertical position are not addressed separately because the cages required by NFPA 58 §8.4.2.2 were determined to be sufficient protection in a study by the Southwest Research Institute.

Some amendments clarify previously adopted amendments regarding the National Fire Protection Association (NFPA) standards. These amendments are not substantive but were inadvertently omitted from the previous adopted amendments in Chapter 9. The amendments to clarify NFPA updates are found in §9.140(1) and (3), (d)(3), (f)(3) and (4), and (g)(2), and §9.141(b)(3) and (i), §9.142(b), and §9.211(b).

The Commission adopts amendments to §9.202 to coincide with the proposal of new forms, which will be adopted concurrently with §9.202.

The Commission also adopts a change to the Figure in §9.403 to remove the effective date in the title of the Figure, which is not necessary for this rulemaking. The Figure shows text from certain sections in NFPA 58 which the Commission has not adopted or has adopted with changes or with additional requirements. The text shown as underlined in the Figure indicates text that the Commission has added or changed from the NFPA 58 wording; the text shown with strike-outs indicates text that the Commission has deleted from the NFPA 58 text. In the case of this Figure, the underlining and strike-outs are retained in the adopted version of the Figure to show the changes. In this rulemaking, the specific changes to the Figure are found on the following rows: the rows for 5.2.8.1, 6.13.5, and 6.27.3.17 which correct a typographical error in the reference to §9.140(f) and the row for 6.8.2.1 which corrects a typographical error in the NFPA 58 section number. The row for 6.19.2 is being changed from an additional requirement to being adopted with changes; the Commission retains the wording of 6.19.12, including paragraphs (A) and (B), but adopts paragraph (C) to require compliance with §9.116. The addition of row 6.27.5.2 corrects an error from NFPA in the 2020 edition of NFPA 58; the change in the Figure ensures consistency with the NFPA tentative interim amendment issued for the 2020 version of NFPA 58, which the Commission has not yet adopted. In the row for 6.29.3.2, the Commission changes the wording to include the specific date of September 1, 2022, instead of the reference to two years from the effective date of the code. As discussed above, TPGA requested that the table use "by September 1, 2022" instead of "prior to September 1, 2022" and the Commission adopts the table with that change.

The Commission adopts the amendments and new rules under Natural Resources Code sections 113.087 and 113.088, amended by Senate Bill 1582 (87th Legislature, Regular Session), and Natural Resources Code section 113.0955, added by Senate Bill 1668 (87th Legislature, Regular Session). The Commission also adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2, 9.6 - 9.8, 9.10, 9.16, 9.20, 9.22, 9.51, 9.52, 9.54, 9.55

Statutory authority: Texas Natural Resources Code, §§113.051, 113.087, 113.088 and 113.0955.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AFS--The Commission's Alternative Fuels Safety Department within the Commission's Oversight and Safety Division.

(2) Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(3) Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(4) Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(5) Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, pursuant to §9.10 of this title (relating to Rules Examination);

(B) who has passed the required employee-level qualification examination pursuant to §9.10 of this title;

(C) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States);

(D) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption); or

(E) who holds a current Dispenser Operations certificate exemption pursuant to §9.20 of this title (relating to Dispenser Operations Certificate Exemption).

(6) Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(7) CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(8) Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, cylinder exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

- (9) Commission--The Railroad Commission of Texas.
- (10) Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.
- (11) Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.
- (12) Continuing education--Courses required to be successfully completed at least every four years by certificate holders to maintain certification.
- (13) Director--The director of AFS or the director's delegate.
- (14) DOT--The United States Department of Transportation.
- (15) Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, and owner-employees.
- (16) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.
- (17) Leak grades--An LP-gas leak that is:
- (A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or
 - (B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.
- (18) Licensed--Authorized by the Commission to perform LP-gas activities through the issuance of a valid license.
- (19) Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.
- (20) LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at the Secretary of State's web site or the Commission's web site.
- (21) LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.
- (22) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.
- (23) Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.
- (24) Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.
- (25) Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.
- (26) Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.
- (27) Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of ASTM International (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."
- (28) Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)
- (29) Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas activities and is authorized by the licensee to implement operational changes.
- (30) Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.
- (31) Outside instructor--An individual, other than a Commission employee, approved by AFS to teach certain LP-gas training or continuing education courses.
- (32) Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.
- (33) Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.
- (34) Property line--The boundary which designates the point at which one real property interest ends and another begins.
- (35) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.
- (36) Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.
- (37) Registered manufacturer--A person who has applied for and been granted a registration to manufacture LP-gas containers by the Commission.
- (38) Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current rules in this chapter.
- (39) School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.
- (40) School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(41) Self-service dispenser--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(42) Service station--An LP-gas installation that, for retail purposes, operates a dispensing station and/or conducts cylinder filling activities.

(43) Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(44) Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(45) Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(46) Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(47) Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(48) Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, bulkheads, and equipment utilized in transferring LP-gas between containers.

(49) Transport--Any bobtail or semitrailer equipped with one or more containers.

(50) Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(51) Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(52) Ultimate consumer--A person who buys a product to use rather than for resale.

§9.7. Applications for Licenses, Manufacturer Registrations, and Renewals.

(a) In addition to complying with NFPA 54 §4.1, no person may engage in any LP-gas activity until that person has obtained a license from the Commission authorizing the LP-gas activities, except as follows:

(1) A person is exempt from licensing under Texas Natural Resources Code §113.081(b) but is required to obtain a license before engaging in any LP-gas activities in commerce or in business.

(2) A state agency or institution, county, municipality, school district, or other governmental subdivision is exempt from licensing requirements as provided by §113.081(g) if the entity is performing LP-gas activities on its own behalf but is required to obtain a license if performing LP-gas activities for or on behalf of a second party.

(3) An original manufacturer of a new motor vehicle powered by LP-gas, or a subcontractor of a manufacturer who produces a new LP-gas powered motor vehicle for the manufacturer is not subject to licensing requirements but shall comply with all other rules in this chapter.

(4) An ultimate consumer is not subject to licensing requirements if performing LP-gas activities dealing only with the ultimate consumer; however, a license is required to register a transport, bobtail, or cylinder delivery unit. An ultimate consumer's license does not require a fee or a company representative.

(b) An applicant for license shall not engage in any LP-gas activities until it has employed a company representative who meets the requirements of §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), or for Category D applicants only, who meets the requirements of §9.17 of this title or has obtained a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption).

(c) Licensees, registered manufacturers, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and/or manufacturer registrations and certificates for employees at that location available for inspection during regular business hours. In addition, licensees and registered manufacturers shall maintain a current version of the rules in this chapter and shall provide access to these rules for each company representative and operations supervisor. The rules shall also be available to employees during business hours.

(d) Licenses and manufacturer registrations issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(e) If a license or registration expires, the person shall immediately cease LP-gas activities.

(f) An applicant for a new license shall submit to AFS:

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and the applicant's properly qualified company representative and the following forms or documents as applicable:

(A) LPG Form 1A if the applicant will operate any outlets pursuant to subsection (g) of this section;

(B) LPG Form 7 and any information requested in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) if the applicant intends to register any LP-gas transports or container delivery units;

(C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another licensee;

(D) any form required to comply with §9.26 of this title (relating to Insurance and Self-Insurance Requirements);

(E) a copy of the current certificate of account status if required by §9.21 of this title (relating to Franchise Tax Certification and Assumed Name Certificates); and/or

(F) copies of the assumed name certificates if required by §9.21 of this title; and

(2) payment for all applicable fees. If the applicant submits the payment by mail, the payment shall be in the form of a check or money order. If the applicant pays the applicable fee online, the applicant shall submit a copy of the online receipt via mail, email, or fax.

(g) A licensee shall submit LPG Form 1A listing all outlets operated by the licensee.

(1) The licensee shall employ at each outlet an operations supervisor who meets the requirements of §9.17 of this title.

(2) Each outlet shall be listed on the licensee's renewal as specified in subsection (k) of this section.

(h) Beginning June 1, 2020, a prospective container manufacturer may apply to AFS to manufacture LP-gas containers in the state of Texas. Beginning June 1, 2020, a person shall not engage in the manufacture of LP-gas containers in this state unless that person has obtained a container manufacturer's registration as specified in this subsection.

(1) Applicants for container manufacturer registration shall file with AFS LPG Form 1M, and any of the following applicable forms or documents:

(A) any form required by §9.26 of this title;

(B) a copy of current certificate of account status if required by §9.21 of this title;

(C) copies of the assumed name certificates if required by §9.21 of this title;

(D) a copy of current DOT authorization. A registered manufacturer shall not continue to operate after the expiration date of the DOT authorization; and/or

(E) a copy of current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the manufacturer may request in writing an extension of time not to exceed 60 calendar days past the expiration date. The request for extension shall be received by AFS prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A registered manufacturer shall not continue to operate after the expiration date of an ASME certificate of authorization until the manufacturer files a current ASME certificate of authorization with AFS or AFS grants a temporary exception.

(2) By filing LPG Form 1M, the applicant certifies that it has read the requirements of this chapter and shall comply with all applicable rules, regulations and adopted standards.

(3) The required fee shall accompany LPG Form 1M. An original registration fee is \$1,000; the renewal fee is \$600.

(A) If submitted by mail, payment shall be by check, money order, or printed copy of an online receipt.

(B) If submitted by email or fax, payment shall be a copy of an online receipt.

(4) If a manufacturer registration expires or lapses, the person shall immediately cease the manufacture, assembly, repair, testing and sale of LP-gas containers in Texas.

(i) Applications for license or registration must include a 24-hour emergency telephone number.

(j) AFS will review an application for license or registration to verify all requirements have been met.

(1) If errors are found or information is missing on the application or other documents, AFS will notify the applicant of the deficiencies in writing.

(2) The applicant must respond with the required information and/or documentation within 30 days of the written notice. Failure to respond by the deadline will result in withdrawal of the application.

(3) If all requirements have been met, AFS will issue the license or manufacturer registration and send the license or registration to the licensee or manufacturer, as applicable.

(k) For license and manufacturer registration renewals:

(1) AFS shall notify the licensee or registered manufacturer in writing at the address on file with AFS of the impending license or manufacturer registration expiration at least 30 calendar days before the date the license or registration is scheduled to expire.

(2) The renewal notice shall include copies of applicable LPG Forms 1, 1A, and 7, or LPG Form 1M showing the information currently on file.

(3) The licensee or registered manufacturer shall review and return all renewal documentation to AFS with any necessary changes clearly marked on the forms. The licensee or registered manufacturer shall submit any applicable fees with the renewal documentation.

(4) Failure to meet the renewal deadline set forth in this section shall result in expiration of the license or manufacturer registration.

(5) If a person's license or manufacturer registration expires, that person shall immediately cease performance of any LP-gas activities authorized by the license or registration.

(6) If a person's license or manufacturer registration has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee in §9.6 of this title (relating to License Categories, Container Manufacturer Registration, and Fees).

(7) If a person's license or manufacturer registration has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee.

(8) If a person's license or manufacturer registration has been expired for one year or more, that person shall not renew but shall comply with the requirements for issuance of an original license or manufacturer registration under subsection (f) or (h) of this section.

(9) After verification that the licensee or registered manufacturer has met all requirements for licensing or manufacturer registration, AFS shall renew the license or registration and send the applicable authorization to the licensee or manufacturer.

(1) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to AFS a fee that is equal to two times the renewal fee required by §9.6 of this title.

(1) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(2) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for LP-Gas Training and Continuing Education), and §9.52 of this title (relating to Training and Continuing Education).

(m) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category B or O license or renewal shall file with AFS a properly completed LPG Form 505 certifying

that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign LPG Form 505.

(2) An applicant for Category A, A2, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with AFS a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

(3) An applicant for Category A, A1 or O license or renewal who repairs or tests ASME containers shall file with AFS a copy of its current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the manufacturer may request in writing an extension of time not to exceed 60 calendar days past the expiration date. The request for extension shall be received by AFS prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A registered manufacturer shall not continue to operate after the expiration date of an ASME certificate of authorization until the manufacturer files a current ASME certificate of authorization with AFS or AFS grants a temporary exception.

§9.8. Requirements and Application for a New Certificate.

(a) In addition to complying with NFPA 58, §§4.4 and 11.2, no person shall perform work, directly supervise LP-gas activities, or be employed in any capacity requiring contact with LP-gas unless:

(1) that individual is a certificate holder who is:

(A) in compliance with all applicable training and continuing education requirements in §9.51 and §9.52 of this title (relating to General Requirements for LP-Gas Training and Continuing Education, and Training and Continuing Education, respectively);

(B) in compliance with renewal requirements in §9.9 of this title (relating to Requirements for Certificate Holder Renewal); and

(C) employed by a licensee or a license-exempt entity in accordance with §9.7 of this title (relating to Applications for Licenses, Manufacturer Registrations, and Renewals) or holds a current examination exemption pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption); or

(2) that individual is a trainee who complies with §9.12 of this title (relating to Trainees).

(b) Any individual, including an ultimate consumer, using an LP-gas transport on a public roadway must obtain a certificate.

(c) An applicant for a new certificate shall:

(1) file with AFS a properly completed LPG Form 16 and the applicable nonrefundable rules examination fee specified in §9.10 of this title (relating to Rules Examination);

(2) pass the applicable rules examination with a score of at least 75%; and

(3) complete any required training in §9.51 and §9.52 of this title.

(d) An applicant for a new Dispenser Operations certificate exemption shall comply with the requirements of §9.20 of this title (relating to Dispenser Operations Certificate Exemption).

(e) An individual who holds an employee-level certificate who wishes to obtain a management-level certificate shall comply with the requirements of this section, including training and fees.

§9.10. Rules Examination.

(a) An individual who passes the applicable rules examination with a score of at least 75% will become a certificate holder. AFS will send a certificate to the licensee listed on LPG Form 16. If a licensee is not listed on the form, AFS will send the certificate to the individual's personal address.

(1) Successful completion of any examination shall be credited to and accrue to the individual.

(2) An individual who has been issued a certificate shall make the certificate readily available and shall present it to any Commission employee or agent who requests proof of certification.

(b) An applicant for examination shall bring to the exam site:

(1) a completed LPG Form 16; and

(2) payment of the applicable fee specified in subsection (c) of this section.

(c) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination.

(1) Dates and locations of available Commission LP-gas examinations may be obtained on the Commission's web site. Examinations may be administered:

(A) at the Commission's AFS Training Center in Austin;

(B) at other designated locations around the state; and

(C) through an online testing or proctoring service.

(2) Individuals or companies may request in writing that examinations be given in their area. AFS shall schedule examinations at its discretion.

(3) Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g) of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), the Category E, F, G, I, and J management-level rules examination shall be administered only in conjunction with the Category E, F, G, I, and J management-level courses of instruction. Management-level rules examinations other than Category E, F, G, I, and J may be administered on any scheduled examination day.

(4) Exam fees.

(A) The nonrefundable management-level rules examination fee is \$70.

(B) The nonrefundable employee-level rules examination fee is \$40.

(C) The nonrefundable examination fee shall be paid each time an individual takes an examination.

(D) Individuals who register and pay for a Category E, F, G, I, or J training course as specified in §9.51(j)(2)(A) of this title (relating to General Requirements for LP-Gas Training and Continuing Education) shall pay the charge specified for the applicable examination.

(E) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to the requirements in §9.14 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal, training, or continuing education fees specified in §9.9 of this

title (relating to Requirements for Certificate Holder Renewal, §9.51 of this title, and §9.52 of this title (relating to Training and Continuing Education.

(F) Beginning September 1, 2022, individuals who register for an examination to be administered by a testing or proctoring service shall pay any fee required by the testing or proctoring service in addition to paying the examination fee to the Commission.

(5) Time limits.

(A) An applicant shall complete the examination within the time limit specified in this paragraph.

(i) The Category E management-level (closed book), Bobtail employee-level (open book), and Service and Installation employee-level (open book) examinations shall be limited to three hours.

(ii) All other management-level and employee-level examinations shall be limited to two hours.

(B) The examination proctor shall be the official time-keeper.

(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(6) The Commission may offer employee-level LP-Gas Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel Dispensing examinations in Spanish or English.

(d) This subsection specifies the examinations offered by the Commission.

(1) Employee-level examinations.

(A) The Bobtail Driver examination qualifies an individual to operate a bobtail, to perform all of the LP-gas activities authorized by the Transport Driver, DOT Cylinder Filler, and Motor/Mobile Fuel Filler examinations, and to perform leak checks and pressure tests, light appliances, and adjust regulators and thermocouples. The Bobtail Driver examination does not authorize an individual to connect or disconnect containers, except when performing a pressure test or removing a container from service.

(B) The Transport Driver examination qualifies an individual to operate an LP-gas transport equipped with a container of more than 5,000 gallons water capacity, to load and unload LP-gas, and connect and disconnect transfer hoses. The Transport Driver examination does not authorize an individual to operate a bobtail or to install or repair transport systems.

(C) The On-Road Motor Fuel Technician examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on motorized vehicles licensed to operate on public roadways. The On-Road Motor Fuel Technician examination does not authorize an individual to fill LP-gas motor or mobile fuel containers.

(D) The Non-Road Motor Fuel Technician examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on vehicles such as industrial forklift trucks and lawnmowers. The Non-Road Motor Fuel Technician examination does not authorize an individual to fill LP-gas motor fuel containers or cylinders.

(E) The Mobile Fuel Technician examination qualifies an individual to install LP-gas mobile fuel containers, cylinders, and LP-gas mobile fuel systems, and replace container valves on mobile fuel equipment such as trailers, catering trucks, mobile kitchens, tar kettles, hot oil units, auxiliary engines and similar equipment. The Mobile Fuel Technician examination does not authorize an individual to fill LP-gas mobile fuel containers or cylinders.

(F) The DOT Cylinder Filler examination qualifies an individual to inspect, requalify, fill, disconnect and connect cylinders, including industrial truck cylinders, and to exchange cylinder valves. The DOT Cylinder Filler examination does not authorize an individual to fill ASME motor or mobile fuel containers.

(G) The Recreational Vehicle Technician examination qualifies an individual to install LP-gas motor or mobile fuel containers, including cylinders, and to install and repair LP-gas systems and appliances on recreational vehicles. The Recreational Vehicle Technician examination does not authorize an individual to fill LP-gas containers.

(H) The Service and Installation Technician examination qualifies an individual to perform all LP-gas activities related to stationary LP-gas systems, including LP-gas containers, appliances, and stationary engines. The Service and Installation Technician examination does not authorize an individual to fill containers or operate an LP-gas transport.

(I) The Appliance Service and Installation Technician examination qualifies an individual to perform all LP-gas activities related to appliances, including installing, repairing and converting appliances, installing and repairing connectors from the appliance gas stop through the venting system, and to perform leak checks on the new or repaired portion of an LP-gas system. The Appliance Service and Installation Technician examination does not authorize an individual to install a container, install or repair piping upstream of and including the appliance gas stop, or to install, repair or adjust regulators.

(J) The Motor/Mobile Fuel Filler examination qualifies an individual to inspect and fill motor or mobile fuel containers on vehicles, including recreational vehicles, cars, trucks, and buses. The Motor/Mobile Fuel Filler examination does not authorize an individual to fill LP-gas cylinders or ASME stationary containers.

(2) Management-level examinations.

(A) The Category A examination qualifies an individual to assemble, repair, install, subframe, test, and sell both ASME and DOT containers and cylinders, including motor or mobile fuel containers and systems, and to repair and install transport and transfer systems.

(B) The Category A-1 examination qualifies an individual to assemble, repair, install, test, and sell ASME containers, including motor or mobile fuel containers and systems, and to repair and install transport and transfer systems.

(C) The Category A-2 examination qualifies an individual to assemble, repair, install, subframe, test, and sell DOT cylinders.

(D) The Category B examination qualifies an individual to subframe, test, and sell transport containers; test LP-gas storage containers; install, test, and sell LP-gas motor or mobile fuel containers and systems; and install and repair transport systems and motor or mobile fuel systems.

(E) The Category C examination qualifies an individual to transport LP-gas in a transport equipped with one or more containers, load and unload LP-gas, and install and repair transport systems.

(F) The Category D examination qualifies an individual to sell, service, and install containers, and to service, install, and repair piping and appliances, excluding motor fuel containers, motor fuel systems, recreational vehicle containers, or recreational vehicle systems.

(G) The Category E examination qualifies an individual to store, sell, transport and distribute LP-gas and perform all other categories of licensed activities except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers and the sale and installation of LP-gas motor or mobile fuel systems rated at more than 25 horsepower.

(H) The Category F examination qualifies an individual to operate a cylinder-filling facility, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of cylinder valves.

(I) The Category G examination qualifies an individual to operate an LP-gas dispensing station to fill ASME motor or mobile fuel containers.

(J) The Category H examination qualifies an individual to transport and sell LP-gas in cylinders.

(K) The Category I examination qualifies an individual to operate a service station as set out in Category F and G.

(L) The Category J examination qualifies an individual to operate a service station as set out in Category I, transport cylinders as set out in Category H and install and connect DOT cylinders.

(M) The Category K examination qualifies an individual to sell and distribute LP-gas through mains or pipes, and to install and repair LP-gas systems.

(N) The Category L examination qualifies an individual to sell and install both LP-gas motor or mobile fuel containers and fuel systems on engines.

(O) The Category M examination qualifies an individual to sell, service, and install recreational vehicle containers, and to install, repair, and service recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers.

(P) The Category N examination qualifies an individual to service and install containers that supply fuel to manufactured housing, and to install, repair, and service appliances and piping systems for manufactured housing.

(Q) The Category O examination qualifies an individual to test LP-gas containers, motor or mobile fuel systems, transfer systems, and transport systems to determine the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, and repair of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers.

(R) The Category P examination qualifies an individual to operate a portable cylinder exchange service where LP-gas is sold in portable cylinders whose LP-gas capacity does not exceed 21 pounds, where the portable cylinders are not filled on site, and where no other LP-gas activity requiring a license is conducted.

(e) Within 15 calendar days of the date an individual takes an examination, AFS shall notify the individual of the results of the examination. If the examination is graded or reviewed by a testing or proctoring service, AFS shall notify the individual of the examination results within 14 days of the date AFS receives the results from the testing or proctoring service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFS shall notify the individual of the reason for the delay before the 90th

day. AFS may require a testing or proctoring service to notify an individual of the individual's examination results.

(f) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed.

(1) Any individual who fails an examination administered by the Commission at the Austin location may retake the same examination one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the AFS director.

(3) An individual who fails an examination may request an analysis of the individual's performance on the examination.

(g) The Commission shall not issue a certificate to an applicant for a management-level certificate that requires completion of a course of instruction until the applicant completes both the required course of instruction and passes the required management-level rules examination.

(h) An applicant for a management-level certificate shall pass the management-level rules examination within two years after completing a required course of instruction. An applicant who fails to pass such an examination within two years of completing such a course shall reapply as a new applicant.

§9.20. Dispenser Operations Certificate Exemption.

An individual may perform work and directly supervise LP-gas activities requiring contact with LP-gas if the individual is granted the Dispenser Operations Certificate Exemption. The exemption may be obtained by completing the Dispensing Propane Safely course, including examination, and complying with paragraph (1) of this section or by completing a PERC-based training course and examination in accordance with paragraph (2) of this section.

(1) Dispenser Operations Certificate Exemption through PERC.

(A) To be granted a Dispenser Operations Certificate Exemption through PERC, the applicant shall:

(i) submit a properly completed LPG Form 16P;

(ii) submit a legible copy of the PERC certificate of completion, which shall:

(I) indicate that the Dispensing Propane Safely course has been completed, including a copy of the transcript listing the examinations completed;

(II) be issued to the individual listed on LPG Form 16P; and

(III) have a completion date after July 18, 2022, and within six months of the date the LPG Form 16P is submitted;

(iii) submit a legible copy of a state-issued identification card or driver's license, including a photo; and

(iv) pay a \$40 registration fee.

(B) AFS will review the application to verify all requirements have been met.

(i) If errors are found or information is missing on the application or other documents, AFS shall notify the applicant of the deficiencies in writing.

(ii) The applicant must respond with the required information and/or documentation within 30 days of the written notice.

Failure to respond by the deadline will result in withdrawal of the application.

(iii) If all requirements have been met, the individual will become a DOT cylinder filler and motor/mobile fuel filler certificate holder as addressed in §9.10(d)(1)(F) and (d)(1)(J) of this title, respectively, (relating to Rules Examination) and AFS shall send a certificate to the licensee.

(2) Dispenser Operations Certificate Exemption through a PERC-based course.

(A) Any individual who completes an approved PERC-based course will be granted a Dispenser Operations Certificate Exemption provided the report required in §9.55(h) of this title (relating to PERC-Based Training) is submitted. The course shall include training and examination. If all requirements have been met, the individual will become a DOT cylinder filler and motor/mobile fuel filler certificate holder as addressed in §9.10(d)(1)(F) and (d)(1)(J) of this title, respectively, and AFS shall send a certificate to the licensee listed on the report.

(B) AFS may refuse to issue or renew a certificate for an individual who presents for credit an unapproved course; a course from an unapproved company; or a course using unapproved, incomplete, or incorrect materials.

(3) The Dispenser Operations Certificate Exemption does not become effective until the certificate is issued by AFS.

(4) Certificate holders issued a Dispenser Operations Certificate exemption shall comply with the rules in this chapter, including the following rules:

(A) §9.135 of this title (relating to Unsafe or Unapproved Containers, Cylinders, or Piping);

(B) §9.136 of this title (relating to Filling of DOT Containers);

(C) §9.137 of this title (relating to Inspection of Cylinders at Each Filling);

(D) §9.141(d) and (g) of this title (relating to Uniform Safety Requirements); and

(E) the entry for NFPA 58 §7.4.3.1 in the Figure in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements).

(5) The certificate accrues to the individual and is nontransferable. An individual who has been issued a certificate shall make the certificate readily available and shall present it to any Commission employee or agent who requests proof of certification.

(6) Each individual shall:

(A) comply with all applicable continuing education requirements in §9.51 and §9.52 of this title (relating to General Requirements for LP-Gas Training and Continuing Education, and Training and Continuing Education, respectively);

(B) comply with renewal requirements in §9.9 of this title (relating to Requirements for Certificate Holder Renewal); and

(C) be employed by a licensee or a license-exempt entity in accordance with §9.7 of this title (relating to Application for Licenses, Manufacturer Registrations, and Renewals).

(7) Failure to comply with the renewal requirements in §9.9 of this title shall result in the expiration of the certificate. If an individual's exemption has been expired for more than two years, that indi-

vidual shall complete all requirements necessary to apply for a new certificate.

(8) A military service member, military veteran, or military spouse shall be exempt from the original registration fee pursuant to the requirements in §9.14 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal fees specified in §9.9 of this title.

§9.51. *General Requirements for LP-Gas Training and Continuing Education.*

(a) In addition to complying with NFPA 58, §§4.4 and 11.2, individuals shall comply with the training and continuing education requirements in this chapter.

(b) Applicants for new certificates, as set forth in §9.8 of this title (relating to Requirements and Application for a New Certificate) and persons holding existing certificates or a Dispenser Operations certificate exemption shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may regain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to AFS.

(c) The training requirements apply to:

(1) applicants for Category D, E, F, G, I, J, K, or M management-level certificates; and

(2) applicants for the following employee-level certifications:

(A) bobtail driver;

(B) DOT cylinder filler;

(C) recreational vehicle technician;

(D) service and installation technician;

(E) appliance service and installation technician; and

(F) motor/mobile fuel filler.

(d) The continuing education requirements apply to the following individuals:

(1) Category D, E, F, G, I, J, K, and M management-level certificate holders;

(2) any ultimate consumer who has purchased, leased, or obtained other rights in any LP-gas bobtail, including any employee of such ultimate consumer if that employee drives or in any way operates the equipment on an LP-gas bobtail;

(3) individuals holding the following employee-level certifications:

(A) bobtail driver;

(B) DOT cylinder filler;

(C) recreational vehicle technician;

(D) service and installation technician;

(E) appliance service and installation technician; and

(F) motor/mobile fuel filler; and

(4) individuals holding a Dispenser Operations certificate exemption.

(e) The training and continuing education requirements do not apply to an individual who:

- (1) drives or fuels a motor vehicle powered by LP-gas as an ultimate consumer;
- (2) fuels motor vehicles as an employee of an ultimate consumer;
- (3) is employed by a state agency, county, municipality, school district, or other governmental subdivision;
- (4) holds a general installers and repairman exemption; or
- (5) holds a management or employee-level certification not specified in subsection (c) or (d) of this section.

(f) Except as provided in §9.41(b) of this title (relating to Testing of LP-Gas Systems in School Facilities), each individual who performs LP-gas activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by the Commission to perform such LP-gas activities shall be properly trained by a competent person in the safe performance of such LP-gas activities.

(g) Individual credit. Successful completion of any required training or continuing education course shall be credited to and accrue to the individual.

(h) No partial credit. Individuals attending courses shall receive credit only if they attend the entire course and pay any training or continuing education course fees in full. The Commission shall not award partial credit for partial attendance.

(i) Schedules. Dates and locations of available AFS LP-gas training and continuing education courses can be obtained on the Commission's web site. AFS courses shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that AFS courses be taught in their area. AFS shall schedule courses at its discretion.

(j) Course registration and scheduling.

(1) Registering for a course. To register for a scheduled training or continuing education course, an individual shall complete the online registration process at least seven days prior to the course.

(2) Costs for courses.

(A) Each registration for a training course shall require the payment of the applicable nonrefundable course fee as follows:

- (i) \$75 for an eight-hour course;
- (ii) \$150 for the 16-hour Category F, G, I, and J course; and
- (iii) \$750 for the 80-hour Category E course.

(B) The course fees do not include the license or rules examination fees described in §9.6 and §9.10 of this title (relating to License Categories, Container Manufacturer Registration, and Fees, and Rules Examination, respectively).

(C) Current certificate holders who have paid the annual renewal fee and who want to add a new certification other than Category E, F, G, I or J shall not be required to pay the \$75 course fee.

(D) Continuing education courses shall be offered at no charge to certificate holders who have timely paid the annual certificate renewal fee specified in §9.9 of this title (relating to Requirements for Certificate Holder Renewal).

(E) Requests for courses where no training or continuing education course credit is given shall be submitted in writing to the AFS training section. The AFS training section may conduct the requested courses at its discretion. The nonrefundable fee for a non-credit course is \$250 if no overnight expenses are incurred by the AFS training section, or \$500 if overnight expenses are incurred. AFS may waive the fee for a non-credit course in cases where the Commission recovers the cost of the course from another source, such as a grant.

(F) AFS may charge reasonable fees for materials for courses using third-party materials.

(3) If any course has fewer than eight individuals registered within seven calendar days prior to the course, AFS may cancel the course and may reschedule the registered individuals in another course agreed upon by the individuals and the AFS training section. The AFS training section reserves the right to determine the number of course registrants.

(4) If a previously registered individual is unable to attend the course at the time and place for which the individual is registered due to illness or other unforeseen circumstances, another individual from the same company may attend that same course in his or her place.

(5) Applicants who take courses offered by an entity other than AFS shall comply with the registration, fee, and other requirements specified by that entity.

(k) An individual registered to take a course shall bring the following items to the course site:

- (1) a registration confirmation email or fax;
- (2) proof of payment unless exempt from the course fee; and
- (3) documents required in §9.10(b) of this title if one or more examinations will be taken.

(l) Individual applicants or certificate holders shall be responsible for promptly notifying the AFS training section in writing of any discrepancies or errors in the training or continuing education records, and shall notify AFS of any discrepancies or errors in examination records or certificates. In the event of a discrepancy, AFS' records, including due dates, shall be deemed correct unless the individual has copies of applicable documents which clarify the discrepancy.

§9.52. Training and Continuing Education.

(a) Training. Individuals identified in §9.51(c) of this title (relating to General Requirements for LP-Gas Training and Continuing Education) shall complete training.

(1) Available training courses.

(A) The 2.1 Dispenser Operations course covers proper filling and handling of ASME motor/mobile fuel containers, appurtenances, DOT cylinders, and dispenser operations.

(B) The 2.3 Bobtail Operations course covers federal and state regulations that apply to hazardous material transportation, the operation of propane delivery vehicles, and the rules in this chapter, including NFPA 54 and NFPA 58, which apply to LP-gas installations.

(C) The 3.2 Residential System Installation course covers the requirements for proper installation and start-up of a residential propane system, including correct appliance operation.

(D) The 3.3 Appliance Conversion, Installation and Venting course covers the requirements for converting, installing, and venting of propane gas appliances.

(E) The 3.8 Recreational Vehicle Gas Appliances course covers servicing of recreational vehicles' LP-gas systems and appliances.

(F) The 16-hour Category F, G, I, and J course covers ASME motor/mobile fuel containers, appurtenances, DOT cylinders, the operations of a dispenser to fill tanks and cylinders, and applicable LP-gas requirements for obtaining a Category F, G, I or J management-level certificate.

(G) The 80-hour Category E course covers all the material in courses 2.1, 2.3, 3.2, 3.3 and 3.8, and the Commission's rules in this chapter, including NFPA 54 and NFPA 58.

(2) Training requirements.

(A) Category E management-level applicants shall attend the 80-hour Category E course;

(B) Category F, G, I, and J management-level applicants shall attend the 16-hour Category F, G, I and J course; and

(C) Category D, K and M management-level applicants and all applicants for employee-level certifications that are subject to training requirements shall complete an eight-hour course. A certificate holder's training deadline shall not be extended if that individual retakes and passes an examination for the current category and level of certification. A training deadline shall be extended only after a certificate holder successfully completes an applicable training course.

(i) Category D management-level applicants shall complete the 3.2 course.

(ii) Category K management-level applicants shall complete the 3.2 course.

(iii) Category M management-level applicants complete the 3.8 course.

(iv) DOT Cylinder Filler applicants shall complete the 2.1 course unless the individual is issued a Dispenser Operations certificate exemption.

(v) Motor and Mobile Fuel Filler applicants shall complete the 2.1 course.

(vi) Bobtail Driver applicants shall complete the 2.3 course.

(vii) Service and Installation applicants shall complete the 3.2 course.

(viii) Appliance Service and Installation applicants may complete either the 3.2 or 3.3 course.

(ix) Recreational Vehicle Technician applicants shall complete the 3.8 course.

(3) Individuals who pass an employee-level rules examination between March 1 and May 31 of any year shall have until May 31 of the next year to complete any required training. Individuals who pass an employee-level rules examination at other times shall have until the next May 31 to complete any required training.

(4) Applicants for company representative or operations supervisor shall comply with the training requirements in this section prior to the Commission issuing a certificate.

(b) Continuing education. A certificate holder shall complete at least eight hours of continuing education every four years as specified in this subsection. Continuing education courses are specified in subsection (e) of this section.

(1) Upon fulfillment of the continuing education requirement, the certificate holder's next continuing education deadline shall be four years after the May 31 following the date of the most recent course the certificate holder has completed, unless the course was completed on May 31, in which case the deadline shall be four years from that date.

(2) A certificate holder's continuing education deadline shall not be extended if an examination for a current category and level of certification is retaken and passed; a continuing education deadline shall be updated only after a certificate holder successfully completes an applicable continuing education course. An individual who completes a continuing education course after the assigned deadline shall have four years from the original deadline to complete the next course.

(3) Certificate holders who are certified as recreational vehicle technicians or appliance service and installation technicians and are also certified to perform LP-gas activities covered by one or more other certifications shall complete the initial continuing education requirements for any one of the certifications held in order to maintain active status. For each subsequent continuing education requirement, such individuals shall be responsible for attending a different continuing education course relevant to one of the other certifications held.

(4) Certificate holders who attend a course offered by an outside instructor shall not be entitled to a refund of the annual renewal fee or any other fees or penalties required by the Commission.

(5) Certificate holders who have not paid the annual certificate renewal fee, including general installers and repairman exemption holders or members of the general public may attend courses at the charge specified in §9.51 of this title. A request to attend a course shall be in writing, submitted to the AFS training section, and granted at AFS' discretion on an individual basis and if space is available.

(6) Any certificate holder who has timely paid the annual certificate renewal fee but is not otherwise required to attend a Commission continuing education course may voluntarily attend a course, if space is available, by registering with the AFS training section as specified in §9.51 of this title.

(c) Adding a new certification. A current certificate holder who successfully completes an examination for an additional certification that requires completion of a training course shall be assigned a training deadline pursuant to subsection (a)(2) and (3) of this section. Upon completion of the required training, the certificate holder shall be assigned a continuing education date pursuant to subsection (b) of this section.

(d) Train-the-Trainer courses. The Train-the-Trainer courses shall not count as credit towards the training or continuing education requirements.

(e) Certificate holders may complete their continuing education requirement by attending a continuing education course for their specific certificate as listed in this subsection or by attending a CETP course listed in subsection (g) of this section:

(1) the 4.1 Employee-Level Dispenser Operations Continuing Education course;

(2) the 4.2 Employee-Level Service and Installation Continuing Education course;

(3) the 4.3 Employee-Level Bobtail Driver Continuing Education course;

(4) the 4.4 Employee-Level Recreational Vehicle Technician Continuing Education course; and

(5) the 6.1 Regulatory Compliance for Managers course.

(f) Continuing education credit for certificate holders.

(1) Individuals holding the following certificates or exemption may receive continuing education credit for the 4.1 Employee-Level Dispenser Operations Continuing Education course:

- (A) a DOT Cylinder Filler certificate;
- (B) a Motor/Mobile Fuel Filler certificate; and/or
- (C) a Dispenser Operations certificate exemption.

(2) Individuals holding the following certificates may receive continuing education credit for the 4.2 Employee-Level Service and Installation Continuing Education course:

- (A) a Service and Installation Technician certificate; and/or
- (B) an Appliance Service and Installation Technician certificate.

(3) Individuals holding a Recreational Vehicle Technician certificate may receive continuing education credit for the 4.4 Employee-Level Recreational Vehicle Technician Continuing Education course.

(4) Individuals holding a Bobtail Driver certificate may receive continuing education credit for the 4.3 Employee-Level Bobtail Driver Continuing Education course.

(5) To meet continuing education requirements, all management-level certificate holders shall complete one of the following courses:

- (A) the 6.1 Regulatory Compliance for Managers course; or
- (B) a course listed in paragraphs (1) - (4) of this subsection.

(6) Any employee-level or management-level certificate holder may also receive continuing education credit by completing any training course listed in subsection (a)(1) of this section for the certificate held by the individual.

(g) Credit for CETP courses. An employee-level certificate holder who has successfully completed a CETP course, including any applicable knowledge and skills assessments, may receive credit toward the continuing education requirements specified in this section as follows:

(1) Items on the table marked with an "x" indicate CETP courses that meet continuing education requirements for employee-level certificate holders in that category.

Figure: 16 TAC §9.52(g)(1)

(2) The successful completion of a CETP course is determined by a CETP course certificate, which is issued only after an individual has completed the prescribed course of study, including any related knowledge and skills assessments, for the applicable CETP job classification.

(3) To receive credit toward the Commission's continuing education requirements, the certificate holder shall submit the following information, clearly readable, to AFS:

- (A) the individual's full name, address, and telephone number;
- (B) a copy of the certificate holder's certificate; and
- (C) a legible copy of the official CETP course certificate.

(4) AFS shall review the submitted material within 30 business days of receipt and shall notify the certificate holder in writing that the request is approved, denied, or incomplete.

(A) If the request is approved, the certificate holder will receive continuing education credit. AFS will send a new certificate if the request is submitted as part of the renewal process in §9.9 of this title (relating to Requirements for Certificate Holder Renewal).

(B) If the request is denied, the certificate holder may submit additional information for review.

(C) If the material is incomplete, AFS shall identify the necessary additional information required.

(D) If the request is denied or incomplete, the certificate holder shall file any additional information within 30 calendar days of the date of the notice in order to receive credit for the CETP course attendance.

(E) Certificate holders requesting credit for CETP course attendance shall submit such requests to allow processing time so that a request is finally approved by May 31 in order for the certificate holder to receive credit toward that deadline.

(h) Credit for PERC-Based Course Attendance. Individuals shall receive credit for attending a PERC-based course per §9.20(2) of this title (relating to Dispenser Operations Certificate Exemption).

§9.55. *PERC-Based Training.*

(a) General. AFS may award training and certification or continuing education credit to DOT cylinder filling or motor/mobile fuel filler employee-level applicants and certificate holders for PERC-based courses administered by an approved company provided the company complies with the requirements of this section.

(1) The PERC-based course shall be consistent with the guidelines established by the PERC Dispensing Propane Safely course.

(2) The PERC-based materials may consist of recorded video materials approved under this section.

(3) An LP-gas licensee may offer courses to its own employees provided that the PERC-based course complies with the requirements of this section.

(4) All PERC-based course curriculum and course materials shall:

- (A) meet the requirements of subsection (c) of this section;
- (B) be submitted to AFS for review; and
- (C) be organized and easily readable.

(b) Application process. Companies seeking to administer a PERC-based course shall submit to AFS:

- (1) the PERC-Based Training Application;
- (2) a non-refundable \$300 registration fee;
- (3) the following for the PERC-based course to be administered:
 - (A) a description of the course;
 - (B) the course curriculum, consistent with the requirements of subsection (c) of this section;
 - (C) course examination materials; and
 - (D) links to or digital copies of any videos included in the course curriculum or examination materials; and

(4) any other information required by this section.

(c) Curriculum standards. The course curriculum must be consistent with the guidelines established by the PERC Dispensing Propane Safely course and shall also include training on the requirements listed in §9.20(4) of this title (relating to Dispenser Operations Certificate Exemption).

(d) AFS review. AFS shall review the application for PERC-based training approval and, within 14 business days of the date AFS receives the application, shall notify the applicant in writing that the application is approved, denied, or incomplete.

(1) Approved applications. AFS shall notify the applicant in writing if the application is approved and the applicant may then begin offering courses.

(2) Denied applications. If an application is denied, AFS' notice of denial shall identify the reason the application does not meet the requirements of subsections (a) - (c) of this section.

(3) Incomplete applications.

(A) If an application is incomplete, AFS' notice of deficiency shall identify the necessary additional information, including any deficiencies in course curriculum or materials.

(B) The applicant shall file the necessary additional information within 30 calendar days of the date of AFS' notice of deficiency.

(C) The applicant's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the application and the necessity of the applicant again paying the non-refundable \$300 registration fee for each subsequent filing of an application.

(e) Revision of course materials. PERC-based courses must be administered using the materials submitted to and approved by AFS. Revisions to any course materials previously approved by AFS shall be submitted in writing, along with a nonrefundable \$100 review fee to AFS.

(1) The nonrefundable \$100 review fee shall be waived if the course materials are revised as a result of changes made by PERC to its Dispensing Propane Safely course or examination materials or changes adopted to the rules in this chapter.

(2) Revised PERC-based course materials shall not be used in a course until the materials received written AFS approval.

(3) AFS shall review the revised course materials and, within 14 business days, shall notify the company in writing that the revised course materials are approved or not approved.

(4) If the revised course materials are not approved:

(A) AFS' notice shall identify the portion or portions that are not approved and/or shall describe any deficiencies in the revised course materials.

(B) The approved company shall file any necessary additional information within 30 calendar days of the date of AFS' notice.

(C) The company's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the request for approval of revised course materials and the necessity of again paying the \$100 review fee for each subsequent filing of revised course materials.

(5) Once approved, the revised course materials may be used in the PERC-based course.

(f) PERC-based training additional responsibilities.

(1) Those administering PERC-based courses are responsible for every aspect of the courses they administer, including the location, schedule, date, time, duration, content, material, demeanor and conduct of an in-person instructor, if applicable, and reporting of attendance information.

(2) AFS may monitor or supervise any PERC-based course or exam.

(g) Complaints. Complaints regarding PERC-based courses shall be made to AFS in accordance with the process specified in §9.54(1) of this title (relating to Commission-Approved Outside Instructors).

(h) Completed courses.

(1) Within ten business days of the conclusion of a course, the approved company administering the course shall report to AFS the following information:

(A) the company's name and license number, if applicable;

(B) list of the persons completing the course, including the following information for each individual listed:

(i) full name,

(ii) last four digits of the person's social security number or RRC identification number;

(iii) the date the course was completed;

(iv) personal mailing address;

(v) the individual's employer; and

(vi) the individual's employer's license number if the course was administered by an approved company that is not the individual's employer.

(2) The report shall be made electronically.

(3) The company shall ensure that AFS receives the report by securing written acknowledgment of its receipt by AFS.

(4) A \$40 registration fee shall be submitted for each individual listed in paragraph (1)(B) of this subsection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202422

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Effective date: July 18, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 475-1295



SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS

16 TAC §§9.126, 9.130, 9.134, 9.140 - 9.143

The Commission adopts the amendments under Natural Resources Code sections 113.087 and 113.088, amended by Senate Bill 1582 (87th Legislature, Regular Session), and Natural Resources Code section 113.0955, added by Senate Bill 1668 (87th Legislature, Regular Session). The Commission also adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.087, 113.088 and 113.0955.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.126. *Appurtenances and Equipment.*

(a) All appurtenances and equipment placed into LP-gas service shall be listed by a nationally recognized testing laboratory such as Underwriters Laboratory (UL), Factory Mutual (FM), or American Gas Association (AGA) unless:

(1) it is specifically prohibited for use by another section of the rules in this chapter;

(2) there is no test specification or procedure developed by the testing laboratory for the appurtenance or equipment; or

(3) it is used and in compliance with any NFPA standard adopted by the Commission.

(b) Appurtenances and equipment that cannot be listed but are not prohibited for use by the rules in this chapter or the manufacturer's instructions shall be acceptable for LP-gas service, provided the appurtenances and equipment are installed in compliance with the applicable rules in this chapter.

(c) The licensee or operator of the appurtenances or the equipment shall maintain documentation sufficient to substantiate any claims regarding the safety of any valves, fittings, and equipment and shall, upon request, furnish copies to AFS.

(d) ASME containers with an individual water capacity over 4,000 gallons shall comply with paragraph (1) or (2) of this subsection:

(1) For container openings 1 1/4-inch or greater in size:

(A) the container shall be equipped with:

(i) a pneumatically-actuated or electrically-actuated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet (1.5 meters) of the internal valve;

(ii) a double back flow check filler valve; or

(iii) a positive shutoff valve in combination with a back flow check valve;

(B) Any vapor or liquid withdrawal opening 1 1/4-inch or larger with piping attached that exclusively provides service to stationary appliances or equipment and which is not part of a transfer system may be equipped with an excess flow valve and a shutoff valve installed as close as practical to the container in lieu of an internal valve or emergency shutoff valve;

(C) For reducing the size of a container opening, only one bushing with a minimum pressure rating in accordance with NFPA 58 Table 5.11.4.2 shall be installed;

(D) Container openings that are not compatible with internal valves shall be permitted to utilize both an excess-flow valve

installed in the container and an emergency shutoff valve or a valve complying with API 607, Fire Test Soft-Seated for Quarter Turn Ball Valves Equipped with Non-Metallic Seats, which shall be pneumatically actuated and shall fail in the closed position.

(2) For container openings less than 1 1/4-inch in size, the container shall be equipped with:

(A) a positive shutoff valve that is located as close to the container as practical in combination with either an excess-flow valve or a back flow check valve installed in the container;

(B) a pneumatically-actuated or electrically-actuated internal valve with an integral excess-flow valve or excess-flow protection; or

(C) a double back flow check filler valve.

§9.140. *System Protection Requirements.*

(a) Stationary LP-gas installations, including LP-gas transfer systems, dispensing systems, and storage containers, shall be protected from tampering and damage as specified in this section.

(b) LP-gas storage containers located on a rural consumer's property from which motor or mobile fuel containers are filled are not required to comply with the fencing and vehicular barrier protection requirements in subsections (c) and (d) of this section.

(c) In addition to NFPA 58, §§6.21.4.2, 6.22.3.2(3), 6.27.3.7, 8.2.1.1, and 6.5.4.5, fencing at LP-gas installations shall comply with the following:

(1) Uprights, braces, and cornerposts of the fence shall be composed of noncombustible material and shall be anchored in concrete a minimum of 12 inches below the ground.

(2) Gates in fences where bulkheads are installed shall be located directly in front of the bulkhead. Gates shall be locked whenever the area enclosed is unattended. Gate posts on gates installed directly in front of the bulkhead shall be located at 45-degree angles to the nearest corner of the bulkhead.

(3) ASME containers or manual dispensers originally manufactured to or modified to be considered by AFS as self-contained units are exempt from the fencing requirements. Self-contained units shall be protected as specified in subsection (d) of this section.

(4) LP-gas containers located at a private residence are exempt from the fencing requirements.

(d) In addition to NFPA 58, §§6.8.1.2, 6.8.6.1(A)-(E), 6.8.6.2(F), 6.27.3.13 and 6.27.3.14, vehicular barrier protection at LP-gas installations, except as noted in this section, shall comply with the following:

(1) Vertical supports for vehicular barrier protection shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The vertical supports shall be capped on the top or otherwise protected to prevent the entrance of water or debris; anchored in concrete at least 18 inches below the ground; and rise at least 30 inches above the ground. Supports shall be spaced four feet apart or less.

(2) The horizontal guardrail for vehicular barrier protection shall be secured to the top of the vertical supports at least 30 inches above the ground. The railing shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The railing shall be capped on the ends or otherwise protected to prevent the entrance of water or debris; and welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to

the protected equipment under normal conditions, including the nature of the traffic to which the protected equipment is subjected.

(3) Locations which have a perimeter fence prohibiting public traffic to the container or cylinder storage area shall not be required to have guardrailing if the vertical supports are located no more than three feet apart.

(4) Openings in horizontal guardrailing, except the opening that is permitted directly in front of a bulkhead, shall not exceed three feet. Only one opening is allowed on each side of the guardrailing. A means of temporarily removing the horizontal guardrailing and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailing and vertical supports. In no case shall the protection provided by the horizontal guardrailing and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only through the 45-degree opening in front of the bulkhead or over the horizontal guardrailing.

(5) Clearance of at least three feet shall be maintained between the vehicular barrier protection and any part of an LP-gas transfer system or container or clearance of two feet for retail service station installations. The two vertical supports at the ends of any vehicular barrier protection which protects a bulkhead shall be located a minimum of 24 and a maximum of 36 inches at 45-degree angles to the nearest corner of the bulkhead.

(6) Vehicular barrier protection shall extend at least three feet beyond any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic.

(7) Installations which have highway barriers located between vehicular traffic and the container and material handling equipment shall not be required to have vehicular barrier protection installed.

(e) If exceptional circumstances exist or will exist at an installation which would require additional protection such as larger-diameter horizontal railing, then the licensee or operator shall install such additional protection. In addition, AFS at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. AFS shall notify the person in writing of the additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with AFS' determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by AFS or removed from service with all product withdrawn from it until AFS' final decision.

(f) In addition to NFPA 58 §5.2.8.1, LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. An asterisk indicates that the requirement applies to the equipment or location listed in that column.

Figure: 16 TAC §9.140(f) (No change.)

(1) Unless colors are specified, lettering shall be in a color that sharply contrasts to the background color of the sign, and shall be readily visible to the public.

(2) Items 1, 2, and 3 in Table 1 may be combined on one sign.

(3) Items 1, 2, and 3 in the column entitled "Licensee or Non-Licensee ASME 4001+ Gal. A.W.C." in Table 1 apply to installations with 4,001 gallons or more aggregate water capacity protected only by vehicular barrier protection as required in subsection (d) of this section, and bulkheads as required by §9.143 of this title (relating

to Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More) for commercial, bulk storage, cylinder filling, or forklift installations.

(4) Item 7 in the column entitled "Storage Racks for DOT Portable or Forklift Containers" in Table 1 may be met with lettering only one rack when multiple racks are installed.

(5) Item 11 in the column entitled "Requirements" in Table 1 applies to facilities which have two or more containers.

(6) Item 13 in the column entitled "Requirements" in Table 1 applies to outlets where an LP-gas certified employee is responsible for the LP-gas activities at that outlet, when a licensee's employee is the operations supervisor at more than one outlet as required by §9.17(a) of this title (relating to Designation and Responsibilities of Company Representative and Operations Supervisor).

(7) Any information in Table 1 of this subsection required for an underground container shall be mounted on a sign posted within 15 feet horizontally of the manway or the container shroud.

(8) Licensees and non-licensees shall comply with operational and/or procedural actions specified by the signage requirements of this section.

(9) Any 24-hour emergency telephone numbers shall be:

(A) monitored at all times; and

(B) be answered by a person who is knowledgeable of the hazards of LP-gas and who has comprehensive LP-gas emergency response and incident information, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this section.

(g) In addition to NFPA 58, §8.4.2.2, storage racks used to store DOT cylinders in the horizontal position located in areas frequented by the public shall be protected against vehicular damage by:

(1) the use of concrete curbs and/or wheel stops provided:

(A) the cylinder storage rack is located a minimum of 48 inches behind a curb or wheel stop that is a minimum of five inches in height above the grade of the driveway or parking area;

(B) if the requirements of subparagraph (A) of this paragraph cannot be met, the cylinder storage rack must be installed a minimum of 48 inches behind a curb or wheel stop that is a minimum of four inches in height above the grade of the driveway or parking area, and a wheel stop at least four inches in height must be installed at least 12 inches from the curb or first wheel stop; and

(C) if wheel stops are used, all wheel stops must be secured against displacement; or

(2) if curbs and/or wheel stops are not installed, guard posts or vehicular barrier protection shall be installed a minimum of 18 inches from each storage rack, and:

(A) consist of at least three-inch schedule 40 steel pipe, capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, no more than four feet apart, and anchored in concrete at least 12 inches below ground and rising at least 30 inches above the ground;

(B) constructed of at least four-inch schedule 40 steel pipe capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, and attached by welding to a minimum 8-inch by 8-inch steel plate at least 1/2 inch thick. The installed

height of the post must be a minimum of 30 inches above the ground. The guard posts and steel plate shall be permanently installed and securely anchored to a concrete driveway or concrete parking area; or

(C) meet the requirements of subsection (d) of this section.

(h) Fencing, guardrails, and valve locks shall be maintained in good condition at all times in accordance with this chapter.

(i) Self-service dispensers shall be protected against vehicular damage by:

(1) vehicular barrier protection that complies with subsection (d) of this section; or

(2) vertical supports that comply with subsection (d) of this section; or

(3) where routine traffic patterns expose only the approach end of the dispenser to vehicular damage, support columns, concrete barriers, bollards, inverted U-shaped guard posts anchored in concrete, or other protection acceptable to AFS, provided:

(A) the cylinder storage rack is located a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of five inches in height above the grade of the driveway or parking area;

(B) if the requirements of subparagraph (A) of this paragraph cannot be met, the cylinder storage rack must be installed a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of four inches in height above the grade of the driveway or parking area, and a concrete wheel stop at least four inches in height must be installed at least 12 inches from the curb or first wheel stop.

(j) Self-service dispensers utilizing protection specified in subsection (i)(2) - (3) of this section shall be connected to supply piping by a device designed to prevent the loss of LP-gas in the event the dispenser is displaced. The device must retain liquid on both sides of the breakaway point and be installed in a manner to protect the supply piping against damage.

§9.143. *Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.*

(a) Instead of NFPA 58, §6.14, all new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more shall:

(1) install a vertical bulkhead complying with subsection (d) of this section; and

(2) install one of the following in all container openings 1 1/4 inches or greater, as required in this section and §9.126 of this title (relating to Appurtenances and Equipment):

(A) pneumatically-actuated or electrically-actuated emergency shutoff valves (ESV);

(B) pneumatically-actuated or electrically-actuated internal valves;

(C) pneumatically-actuated or electrically-actuated API 607 ball valves; or

(D) in lieu of the ESV or internal valve specified in subparagraphs (A) and (B) of this paragraph, a backflow check valve may be installed where the flow is in one direction into the container. The backflow check valve shall have a metal-to-metal seat or a primary resilient seat with metal backup, not hinged with combustible material, and shall be designed for the specific application.

(b) Valve protection requirements.

(1) The pneumatic ESV and/or backflow check valves shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 36 inches long installed between the ESV and the bulkhead.

(2) The ESV shall be installed in the piping so that any break resulting from a pull away will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection and will activate the ESV at the bulkhead and the internal valves, ESV, and API 607 ball valves at the container or containers. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.

(3) Pneumatically-actuated or electrically-actuated ESV, internal valves, and API 607 ball valves shall be equipped for automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet (1.5 meters) of the ESV, internal valves, and/or API 607 ball valves. Temperature sensitive elements shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) Internal valves, ESVs, and backflow check valves shall be tested annually for working order. The results of the tests shall be documented in writing and kept in a readily accessible location for one year following the performed tests.

(5) Pneumatically-actuated or electrically-actuated internal valves, ESV, and API 607 ball valves shall be interconnected and incorporated into at least one remote operating system.

(c) In addition to NFPA 58 §5.9.4.1, stationary LP-gas installations or railroad tank car transfer systems to fill trucks with no stationary storage involved shall have vertical bulkheads, pneumatic ESV and/or backflow check valves installed where the flow is in one direction into the container. ESVs, internal valves, and API 607 ball valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to System Protection Requirements) as follows:

(1) For all new and existing facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV.

(2) In addition to NFPA 58 §7.2.3.8 beginning September 1, 2005, for new installations, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 25 and 100 feet from the ESV at the bulkhead and in the path of egress from the ESV. API 607 ball valves installed after February 1, 2008, shall also meet the requirements of this section.

(d) Existing installations which have horizontal bulkheads and cable-actuated ESV shall comply with the following:

(1) If the horizontal bulkhead requires replacement, it shall be replaced with a vertical bulkhead;

(2) If a cable-actuated ESV requires replacement, it shall be replaced with a pneumatically-actuated or electrically-actuated ESV;

(3) If the horizontal bulkhead or a backflow check valve or a cable-actuated ESV are moved from their original location to another location, no matter what the distance from the original location, then

the installation shall comply with the requirements for a vertical bulkhead and pneumatically-actuated or electrically-actuated ESV;

(4) All cable-actuated ESV shall be replaced with pneumatically-actuated or electrically-actuated ESV by January 1, 2011.

(e) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) Bulkheads shall be installed for both liquid and vapor return piping.

(2) No more than two transfer hoses shall be attached to a pipe riser. If two hoses are simultaneously connected to one or two transports, the use of the two hoses shall not prevent the activation of the ESV in the event of a pull away.

(3) Both liquid and vapor transfer hoses shall be plugged or capped when not in use.

(4) Bulkheads shall be located at least 10 feet from any aboveground container or containers and a minimum of 10 feet horizontally from any portion of a container or valve exposed aboveground on any underground or mounded container. If the 10-foot distance cannot be obtained, the licensee or nonlicensee shall inform AFS in writing and include all necessary information. AFS may grant administrative distance variances to a minimum distance of five feet. If the licensee or nonlicensee requests that the bulkhead be closer than five feet to the container or containers, the licensee or nonlicensee shall apply for an exception to a safety rule as specified in §9.27 of this title (relating to Application for an Exception to a Safety Rule).

(5) Horizontal bulkheads shall not be converted to vertical bulkheads.

(6) Bulkheads shall be anchored in reinforced concrete to prevent displacement of the bulkhead, piping, and fittings in the event of a pullaway.

(7) Bulkheads shall be constructed by welding using the following materials or materials with equal or greater strength, as shown in the diagram.

Figure: 16 TAC §9.143(e)(7) (No change.)

(A) Six-inch steel channel iron shall be used.

(B) Legs shall be four-inch schedule 80 piping.

(C) The top crossmember of a vertical bulkhead shall be six-inch standard weight steel channel iron. The channel iron shall be installed so the channel portion is pointing downward to prevent accumulation of water or other debris. The height of the top crossmember above ground shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pullaway.

(D) The kick plate shall be at least 1/4 inch steel plate installed at least 10 inches from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed to prevent torsional stress from being placed on the piping to the pipe risers.

(E) Pipe sleeves or couplings shall comply with clause (i) or (ii) of this subparagraph.

(i) Either a schedule 40 pipe sleeve or a 3,000-pound coupling shall be welded between the top crossmember and the kick plate;

(I) Pipe sleeves shall have a clearance of 1/4 inch or less for the piping to the pipe riser, and the piping shall terminate through the bulkhead with a schedule 80 pipe collar, a minimum 12-inch schedule 80 threaded (not welded) pipe riser (nipple), and an elbow or other fitting between the bulkhead and hose coupling;

(II) If a 3,000-pound coupling is used, no collar is required; however, the minimum 12-inch length of schedule 80 threaded pipe riser and an elbow or other fitting between the bulkhead and hose coupling are required;

(III) Elbows or other fittings shall comply with NFPA 58, §5.11.4 and shall direct the transfer hose from vertical to prevent binding or kinking of the hose; or

(ii) A pre-manufactured riser pipe break-away coupler shall be designed with an engineered break point located between two swing check valves.

(I) The riser pipe break-away coupler shall be designed so that the device used in the loading or unloading operations is able to stop the flow of product from both the source and the receiving tank within 20 seconds without human intervention in the event of a pullaway; and

(II) The riser pipe break-away shall be designed to direct the transfer hose from vertical to prevent binding or kinking of the hose.

(8) In lieu of a minimum 12-inch nipple on a vertical bulkhead, swivel-type piping (breakaway loading arm) may be installed. The swivel-type piping shall meet all applicable provisions of the rules in this chapter. The swivel-type piping may also be used for loading, unloading, or product transfer, but shall not be used in lieu of ESVs. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(9) AFS may require additional bulkhead protection if the installation is subject to exceptional circumstances or located in an unusual area where additional protection is necessary to protect the health, safety, and welfare of the general public.

(f) The bulkheads, internal valves, backflow check valves, and ESVs shall be kept in working order at all times in accordance with the manufacturer's instructions and the rules in this chapter. If the bulkheads, internal valves, backflow check valves and ESVs are not in working order in accordance with the manufacturer's instructions and the rules in this chapter, the licensee or operator of the installation shall immediately remove them from LP-gas service and shall not operate the installation until all necessary repairs have been made.

(g) In addition to NFPA 58 §§5.11.6 and 6.11.6.1, by February 1, 2003, rubber flexible connectors which are 3/4-inch or larger in size installed in liquid or vapor piping at an existing liquid transfer operation shall have been replaced with a stainless steel flexible connector. Stainless steel flexible connectors shall be 60 inches in length or less, and shall comply with all applicable rules in this chapter. Flexible connectors installed at a new installation after February 1, 2001, shall be stainless steel.

(h) If necessary to increase LP-gas safety, AFS may require a pneumatically-actuated or electrically-actuated internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 inch or one inch in size.

(i) Stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more are exempt from subsections (a) through (c) of this section provided:

(1) each container is filled solely through a 1 3/4 inch double back check filler valve installed directly into the container;

(2) at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located be-

tween 25 and 100 feet from the point of transfer in the path of egress to close the primary discharge valves in the containers; and

(3) the LP-gas installation is not used to fill an LP-gas transport.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202426

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Effective date: July 18, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 475-1295



SUBCHAPTER C. VEHICLES

16 TAC §9.202, §9.211

The Commission adopts the amendments under Natural Resources Code sections 113.087 and 113.088, amended by Senate Bill 1582 (87th Legislature, Regular Session), and Natural Resources Code section 113.0955, added by Senate Bill 1668 (87th Legislature, Regular Session). The Commission also adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.087, 113.088 and 113.0955.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202427

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Effective date: July 18, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 475-1295



SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §9.403

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 16 TAC §9.403 is not included in the print version of the Texas Register. The

figure is available in the on-line version of the July 15, 2022, issue of the Texas Register.)

The Commission adopts the amendments under Natural Resources Code sections 113.087 and 113.088, amended by Senate Bill 1582 (87th Legislature, Regular Session), and Natural Resources Code section 113.0955, added by Senate Bill 1668 (87th Legislature, Regular Session). The Commission also adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.087, 113.088 and 113.0955.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.403. Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules.

Figure: 16 TAC §9.403(a)

(b) If a section in NFPA 58 refers to another section in NFPA 58 which the Commission has not adopted, or which the Commission has adopted with additional or alternative language, then persons shall comply with the applicable Commission rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202428

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Effective date: July 18, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 475-1295



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.9

The Comptroller of Public Accounts adopts amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers, without changes to the proposed text as published in the May 27, 2022, issue of the *Texas Register* (47 TexReg 3106). The rule will not be republished.

The comptroller amends the section to reflect the changes made in Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers and Distributors of Certain Off-Highway Vehicles Purchased Outside This State), made by Senate Bill 586, 87th Legislature, 2021, effective September 1, 2021.

The comptroller amends subsection (e)(5) to include "distributors" alongside the existing term "manufacturers" to implement the reporting requirements for both license types. Distributors of off-highway vehicles are subject to the same reporting requirements as manufacturers of off-highway vehicles. The comptroller adds the effective dates for the reporting requirements for both manufacturers and distributors.

The comptroller adds the definition of distributor, as defined by Tax Code, §151.481(1) (Definitions) in subparagraph (A)(ii). The comptroller re-numbers subsequent clauses.

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §§151.481 (Definitions), 151.482 (Reports By Manufacturers and Distributors), 151.485 (Civil Penalty), 151.486 (Actions By Texas Department Of Motor Vehicles), and 151.487 (Audit; Inspection).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2022.

TRD-202202451

Jenny Burleson

Director, Tax Policy Division

Comptroller of Public Accounts

Effective date: July 19, 2022

Proposal publication date: May 27, 2022

For further information, please call: (512) 475-2220



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 808. YOUTH DRIVER EDUCATION FUNDING PROGRAM

The Texas Workforce Commission (TWC) adopts new Chapter 808, relating to the Youth Driver Education Funding Program, comprising the following subchapters:

Subchapter A. Youth Driver Education Funding Program Eligibility, §808.1

Subchapter B. Use of Youth Driver Education Funds, §808.21

New §808.1 is adopted *without changes* to the proposed text as published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 893) and, therefore, the adopted rule text will

not be published. New §808.21 is adopted *with changes* to the proposed text as published and the adopted rule text will be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 808 rules is to implement Senate Bill (SB) 2054 from the 87th Texas Legislature, Regular Session (2021). SB 2054 amended Texas Transportation Code, Chapter 521, Subchapter H to add §521.168, Payment of Fees for Certain Foster and Homeless Children and Youths, which states that unless prohibited by Texas Transportation Code, §521.4265(c), TWC shall, upon request from an individual who meets the eligibility criteria outlined in Texas Transportation Code, §521.168, pay the fees associated with obtaining a driver's license imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001.

Texas Transportation Code, §521.168(a) lists the following criteria for eligible individuals:

--Individuals eligible for a driver's license fee exemption under Texas Transportation Code, §521.1811; or

--Individuals younger than 26 years of age who were or are:

--in the managing conservatorship of the Texas Department of Family and Protective Services (DFPS) on the day before the individual's 18th birthday; or

--a homeless child or youth, as defined by 42 United States Code §11434a.

Texas Transportation Code, §521.168(b) stipulates that TWC shall establish a process by which an eligible individual may apply to TWC for the payment of fees associated with obtaining a driver's license imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001, and TWC pays those fees on the eligible individual's behalf.

SB 2054 also amended Texas Transportation Code, §521.4265(b) and (c) and added §521.4265(d). Texas Transportation Code, §521.4265(b) and (c) states that these fees will be paid for through the Texas Department of Public Safety's (DPS) identification fee exemption account. Texas Transportation Code, §521.4265(b) stipulates that DPS shall request that the Texas Comptroller of Public Accounts transfer to TWC amounts sufficient to cover the cost of implementing the Youth Driver Education Funding Program under Texas Transportation Code, §521.168, including amounts sufficient for TWC's payment of fees to entities other than DPS.

Texas Transportation Code, §521.4265(c)(1) states that fund transfers for the Youth Driver Education Funding Program may not be requested if the balance of the account for the fiscal year is less than three times the amount expended in the previous fiscal year for fee waivers provided by Texas Transportation Code, §521.1015(e) and §521.1811.

Texas Transportation Code, §521.4265(d) requires DPS, in consultation with TWC, to establish rules for a process governing these fund transfers.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. Youth DRIVER EDUCATION FUNDING PROGRAM Eligibility

TWC adopts new Subchapter A:

§808.1. Eligible Population

New §808.1 states that TWC shall pay the fees associated with obtaining a driver's license imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001, for eligible individuals who meet the criteria listed in Texas Transportation Code, §521.168(a).

SUBCHAPTER B. Use of Youth DRIVER EDUCATION Funds

TWC adopts new Subchapter B:

§808.21. Verification Process

New §808.21 describes the verification process by which eligible individuals may apply to have fees associated with obtaining a driver's license--imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001--paid for through TWC's Youth Driver Education Funding Program. New §808.21 also describes how TWC will respond to individuals requesting payment who are determined to be ineligible and provides steps required for driver education providers to receive a fee payment.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on March 28, 2022. TWC received comments from DFPS and a joint comment from the coalition of youth advocates, which included Partnerships for Children, Texas Appleseed, Texas Court Appointed Special Advocates, Texas Foster Youth Justice Project, Texas Network of Youth Services, and two individuals who advocate for foster youth.

§808.1. Eligible Population

COMMENT: The coalition recommended that the rule be revised to make clear that behind-the-wheel training was available to participants 18 years of age and older.

RESPONSE: TWC does not plan to incorporate specific allowable costs within the rule and will address these issues as part of the policy and processes to implement the rule. TWC does plan to make the policy clear that behind-the-wheel training is allowable to all participants who need it.

No changes were made in response to this comment.

§808.21. Verification Process

COMMENT: DFPS and the coalition requested that TWC provide a list of approved driver education providers in Texas that meet all the requirements listed in §808.21(a).

RESPONSE: Due to the statewide nature of the program and considering that providers continue to open and close and are not under obligation to provide any information to TWC, TWC does not intend to keep a current list. TWC will use the Texas Department of Licensing and Regulation list of licensed applications for its eligibility determinations and recommends that applicants use the same list. Applicants are not expected to conduct an eligibility check because TWC will confirm eligibility. TWC does not expect a significant number of education providers to be ineligible based on research conducted. Should an applicant propose an ineligible provider, TWC will provide a list of nearby eligible providers.

No changes were made to the rule in response to this comment.

COMMENT: DFPS and the coalition recommended that TWC accept applications in multiple digital formats, accept eligibility

verification in multiple forms, and provide an opportunity for the applicant to give an additional contact to receive information relating to the application. Additionally, the coalition recommended that TWC provide a confirmation of receipt along with a confirmation number to ease future inquiries.

RESPONSE: TWC intends to accept applications through a website, by email, and through standard mail. Automatic confirmation will be given where feasible. TWC will accept documents in any legally acceptable format and intends to accept commonly used eligibility verification documents in addition to the form that TWC will develop and make available. Should an applicant wish to provide a second contact person, the second contact person will also be contacted.

The language in §808.21(b) is changed to clarify that submission can be made through multiple methods.

COMMENT: DFPS requested that the signatory for the youth's eligibility be automatically included in communication regarding the application if the applicant is currently in foster care.

RESPONSE: TWC will include the designated case manager or any other appropriate DFPS staff members in communication with those individuals currently in foster care.

No changes were made to the rule in response to this comment.

COMMENT: The coalition requested that TWC amend the rule to require contact with the applicant in the event that TWC is unable to determine the individual's eligibility.

RESPONSE: TWC revised the language in §808.21(c) to clarify that TWC will make reasonable efforts to contact any individual whose eligibility cannot be determined.

COMMENT: The coalition recommended that TWC include an explanation of why an applicant is ineligible if an application is rejected.

RESPONSE: TWC intends to provide clear information on why an applicant is ineligible if he or she is found to be so. Any applicant will be able to reapply to the program if circumstances change or he or she is able to provide more accurate documentation.

No changes were made to the rule in response to this comment.

COMMENT: DFPS and the coalition asked for clarification on what specifically will be paid for, a website clearly explaining payment procedures, and how payment and enrollment will interact.

RESPONSE: TWC will provide a website with complete guidance for applicants, both on what is eligible to be paid for and how payment procedures will work. TWC intends to support youth even if enrollment requires simultaneous payment, the process for which will be addressed in TWC policies.

The language in §808.21(e) is changed to clarify this intent.

COMMENT: DFPS requested that staff be familiar with situations that may prevent participants in the program from completing an education program or test. The coalition recommended that language pertaining to whether a youth "fails to attend" be omitted.

RESPONSE: TWC intends for staff overseeing this program to be familiar with the challenges that participants may face. TWC also accepts a self-attestation of inability from the participant to receive the waiver. The intention of the language is specifically to avoid participants not completing a program or test, and not to assess their attendance.

The language in §808.21(f) is changed to clarify this intent.

COMMENT: The coalition requested that payment be streamlined, possibly by agreeing to contract with specific providers.

RESPONSE: Due to the statewide nature of the program and considering that providers continue to open and close and are not under obligation to provide any information to TWC, TWC is not looking to select specific providers beyond the eligibility requirements laid out in rule. TWC is concerned that any limitations might be more detrimental than the benefits of the streamlining.

No changes were made to the rule in response to this comment.

COMMENT: The coalition suggested revisions to §808.21(i)(2) and (3) to address a situation where an applicant mistakenly pays the provider prior to applying and ensure that all fees can be refunded.

RESPONSE: TWC reviewed the language and feels that current language is sufficient to ensure that all relevant payments are recaptured if appropriate. In cases in which a youth has mistakenly paid the provider prior to the application's approval, TWC will work with the youth and provider to resolve the situation, but the emphasis and primary structure of this program is intended to be a direct payment from TWC to the education provider. Additional documentation and the applicant's time will be required to address a prepayment situation. TWC will make clear in all materials that applicants should not make any payments to the provider, and if this prevents enrollment, TWC will work with them to address the situation.

No changes were made to the rule in response to this comment.

SUBCHAPTER A. YOUTH DRIVER EDUCATION FUNDING PROGRAM ELIGIBILITY

40 TAC §808.1

STATUTORY AUTHORITY

The new rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rule implements the changes made to the Texas Transportation Code, Chapter 521, by SB 2054, specifically the requirements of amended Texas Transportation Code, §521.168(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202410

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: February 25, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER B. USE OF YOUTH DRIVER EDUCATION FUNDS

40 TAC §808.21

The new rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rule implements the changes made to the Texas Transportation Code, Chapter 521, by SB 2054, specifically the requirements of amended Texas Transportation Code, §521.168(b).

§808.21. Verification Process.

(a) To receive a driver education fee waiver, an eligible individual must identify a driver education provider with whom he or she intends to enroll that:

(1) is registered with the Texas Department of Licensing and Registration as a certified Texas driver education provider;

(2) is a registered vendor in accordance with rules established by the Agency and the Texas Comptroller of Public Accounts; and

(3) charges a rate that does not exceed twice the average rate of all other certified Texas driver education providers within a 30-mile radius of the selected certified Texas driver education provider's physical location. For driver education providers providing online instruction, their rate will be compared to the average rate for online driver education instruction available in Texas.

(b) Once a driver education provider is selected, the eligible individual must visit a website designated by the Agency to complete and submit via the website, email, or mail, the Driver Education Waiver Request Form, which includes:

(1) individual eligibility verification; and

(2) Youth Driver Education Funding Program eligibility verification.

(c) Agency staff shall review the form within five business days of submission and notify the requestor of the individual's eligibility status. If staff is unable to determine eligibility, staff will make reasonable efforts to contact the individual for further information.

(d) Once participant and Youth Driver Education Funding Program eligibility are determined, Agency staff shall:

(1) for an eligible individual, submit a payment request on the individual's behalf to the Agency's Finance Division; or

(2) for an ineligible individual, send a response to the individual alerting them of their ineligibility.

(e) After an eligible participant has completed enrollment with the selected provider, or submitted documentation that enrollment cannot be completed without payment, the Agency's Finance Division shall review and process the payment request in keeping with Agency policies and procedures regarding fee payment, and if sufficient funds have been transferred from the Texas Department of Public Safety (DPS) to the Agency. If enrollment is not possible without payment, TWC will work with applicants to enroll them at time of payment.

(f) An eligible participant who does not complete driver education or a test paid for under this chapter must wait for a period of three months before they enroll in a new course or test to be paid for by this chapter. An eligible participant may have the required waiting period waived by providing a written attestation describing the circumstances

that prevented them from attending or completing the driver education or test and explaining why they assert the circumstances were outside their control.

(g) The Agency shall pay driver education providers for services provided to an eligible individual from the fund after the individual's application receives approval from the Agency, the driver's education provider submits required payment documentation that is accurate and complete, and the individual submits a completed driver education enrollment agreement.

(h) All Youth Driver Education Funding Program uses described in this chapter shall be monitored and reported on as required by the Texas Comptroller of Public Accounts, the Agency, and DPS.

(i) Driver education providers shall repay to the Agency improper payments received or refunds due for driver education funded under this chapter in instances:

(1) involving fraud committed by the driver education provider;

(2) in which the provider was paid for driver education from another source;

(3) in which the provider did not deliver driver education;

or
(4) in which a refund is due under Texas Education Code, Chapter 1001, Subchapter I.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202411

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: February 25, 2022

For further information, please call: (512) 689-9855



CHAPTER 840. WIOA ELIGIBLE TRAINING PROVIDERS

The Texas Workforce Commission (TWC) adopts amendments to Chapter 840, relating to WIOA Eligible Training Providers:

Subchapter A. General Provisions, §840.2

Subchapter F. Adverse Actions, §§840.51, 840.53, and 840.54

Subchapter G. State and Local Flexibility, §840.61

The amendments to §§840.2, 840.51, 840.53, 840.54, and 840.61 are adopted without changes, to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1609), and the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

TWC's Chapter 840 addresses the requirements of training services provided through the Workforce Innovation and Opportunity Act (WIOA). The chapter became effective on January 4, 2021.

The amendments to Chapter 840 will clarify the requirements for participants, Local Workforce Development Boards (Boards), and eligible training providers (ETPs) engaged with TWC's statewide Eligible Training Provider List (ETPL) specifically, and the ETP system in general.

Chapter 840 describes rules for the provision of training services funded through TWC as required by WIOA §§116, 122, and 134; 20 Code of Federal Regulations (CFR) Part 680, Subparts B - D; and 20 CFR §681.550.

Communication with Boards and ETPs indicated that enhancements to Chapter 840 relating to the local administration of training services provided through the ETPL would be beneficial to the effective administration of the ETP system and statewide ETPL.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§840.2. Definitions

Section 840.2 is amended to add the definition for "eligible training provider list" and the subsequent paragraphs are renumbered accordingly.

SUBCHAPTER F. ADVERSE ACTIONS

TWC adopts the following amendments to Subchapter F:

§840.51. Reporting Actions

Section 840.51(a) and (d) are amended to make technical corrections to the language.

§840.53. Compliance Violations

Section 840.53 is amended to rename the section "Compliance Violations." New §840.53(b) is added to explicitly require providers to acknowledge TWC's authority under the Family Educational Rights and Privacy Act to receive education records. Relettered §840.53(c) and (d) are amended to require providers to submit acknowledgement of §840.53(a) and (b) requirements during initial eligibility determination and annual reporting periods. New §840.53(g) is added to clarify that providers no longer meeting the requirements in §840.10 will be removed from the statewide ETPL.

§840.54. Continuation of Students in Removed Programs

Section 840.54 is amended to update the relating to statement for the reference to §840.53 from "WIOA Violations" to "Compliance Violations."

SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY

TWC adopts the following amendments to Subchapter G:

§840.61. Individual Training Accounts

Section 840.61 is amended to add subsection (c) to clarify that all changes to program costs must be included on the statewide ETPL and add subsection (g) to require that a Board informs participants and training providers that funds are not available unless the Board or Board's fiscal agent has approved and issued an individual training account.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period ended on April 25, 2022. TWC received comments from the Tracy Andrus Foundation.

§840.2. Definitions

COMMENT: One organization expressed concern that the phrase "at the discretion of the board" in proposed §840.2(6) was not adequately described and supported with "clear directives to boards on the scope of their discretion."

RESPONSE: TWC appreciates the comment and will work with Boards to provide guidance and technical assistance as needed.

No changes were made to the rule in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §840.2

STATUTORY AUTHORITY

The rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule implements the requirements set out in WIOA §§116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR §681.550.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202412

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER F. ADVERSE ACTIONS

40 TAC §§840.51, 840.53, 840.54

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement the requirements set out in WIOA §§116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR §681.550.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202414

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY

40 TAC §840.61

The rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule implements the requirements set out in WIOA §§116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR §681.550.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202415

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 689-9855



CHAPTER 849. EMPLOYMENT AND TRAINING SERVICES FOR DISLOCATED WORKERS ELIGIBLE FOR TRADE BENEFITS

Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 849, relating to Employment and Training Services for Dislocated Workers Eligible for Trade Benefits:

Subchapter A. General Provisions, §§849.1 - 849.3

Subchapter B. Trade Services Responsibilities, §849.11 and §849.12

Subchapter C. Trade Services, §§849.21 - 849.23

Subchapter D. Support Services, §849.41

Subchapter E. Complaints and Appeals, §849.51 and §849.52

The amendments to §§849.1 - 849.3, 849.11, 849.12, 849.21 - 849.23, 849.41, 849.51, and 849.52 are adopted without changes, to the proposed text as published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2705), and the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose for the amendments is to align Chapter 849 with Trade Adjustment Assistance for Workers Final Rule (TAA Final Rule).

Trade Adjustment Assistance (TAA) is a federal entitlement program established by the Trade Act of 1974 to assist workers adversely impacted by foreign trade or the shifting of jobs from the United States to other countries. Workers who have lost or may lose their jobs because of their company's decline in production or sales due to increased imports or the outsourcing of jobs to foreign countries are potentially eligible for TAA services and benefits.

On August 21, 2020, the United States Department of Labor Employment and Training Administration (ETA) released the TAA Final Rule, which is codified under 20 Code of Federal Regulations (CFR) Part 618. The final rule modernizes the TAA Program, consolidates all applicable program regulations into a single section of the CFR, removes outdated references to the Workforce Investment Act (WIA), and continues to align the TAA Program with the Workforce Innovation and Opportunity Act (WIOA). The TAA Final Rule became effective on September 21, 2020.

Texas Government Code, §2001.039, requires that every four years each state agency review and consider for re adoption, revision, or repeal each rule adopted by that agency. TWC reviewed the rules in Chapter 849 and determined that the rules are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist and any changes to the rules are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§849.1. Purpose

Section 849.1(a)(2) is amended to update the reference from WIA to WIOA.

Section 849.1(a)(3) is amended to clarify that Rapid Response services are provided following an announcement or notification of a permanent closure or mass layoff or the filing of a TAA petition.

Section 849.1(b)(1) and (2) is amended to state that suitable employment is required for trade-affected workers.

§849.2. Definitions

New §849.2(1), the definition for "Adversely affected employment," is added to align with the language of the TAA Final Rule.

New §849.2(2), the definition for "Adversely affected incumbent worker," is added to align with the language of the TAA Final Rule.

New §849.2(3), the definition for "Adversely affected worker," is added to align with the language of the TAA Final Rule. The subsequent paragraphs are renumbered accordingly.

Current §849.2(5), the definition for "Employer-Based Training," is removed to align with the TAA Final Rule. The TAA Final Rule uses the term "Work-based training," and that term is defined in new §849.2(21).

New §849.2(8) is added to define "Individual Employment Plan (IEP)." The TAA Final Rule uses the term "Individual Employment Plan (IEP)" instead of "Reemployment and Training Plan

(REP)," and, therefore, the definition for REP in §849.2(9) is removed.

Renumbered §849.2(9), the definition for "Job search allowance," is amended to remove the reference to a "cash" benefit and replace the term "trade-certified workers" with "trade-affected workers."

New §849.2(10) is added to define "Labor market information."

Renumbered §849.2(11) is amended to update the reference from WIA to WIOA.

Renumbered §849.2(12), the definition for "Relocation allowance" is amended to replace the term "trade-certified worker" with "trade-affected worker" and expand the definition to include that relocation of the worker's household and family can be supported if the wage is in at least the 75th percentile of national wages.

Renumbered §849.2(14) is amended to modify the definition of "Trade Act" to include reversions of the Trade Adjustment Assistance Reauthorization Act of 2015, referred to as Reversion 2021.

New §849.2(15), formerly §849.2(12), is amended to update the definition of "Trade-affected worker" to include adversely affected workers and adversely affected incumbent workers. The TAA Final Rule uses the term "Trade-affected worker" in place of "Trade-Certified Worker," and, therefore, the definition of Trade-Certified Worker in §849.2(14) is removed.

Renumbered §849.2(16) is amended to clarify that "Trade benefits" are benefits available to any member of a worker group certified by the United States Department of Labor as trade-affected.

Renumbered §849.2(17) is amended to clarify that "Trade Readjustment Allowances" are a weekly allowance payable to adversely affected workers who meet the requirements outlined in the TAA Final Rule.

Renumbered §849.2(20) is amended to update the reference from WIA to 29 United States Code Chapter 23.

New §849.2(21) is added to provide the definition for "Work-based training."

§849.3. Trade Service Strategy

Section 849.3(a)(2) is amended to replace "demand occupations" with "in-demand occupations and the earning potential of those occupations" for the analysis of the local labor market.

New §849.3(a)(3) is added to include "determine skill requirements of local in-demand occupations" to the analysis of the local labor market. The subsequent paragraphs are renumbered accordingly.

Renumbered §849.3(a)(4) is amended to change "employment opportunities" to "job vacancy listings" and the skills necessary to obtain the jobs identified in the listings to align with the TAA Final Rule.

Section 849.3(a)(4) is deleted to remove "identify employer-based training opportunities" from the analysis of the local labor market.

Section 849.3(b) is amended to remove "coordinate various service delivery approaches."

Section 849.3(b)(2) is amended to remove WIA core and intensive services to support rapid reattachment to the workforce and incorporates the WIOA term of career services.

Section 849.3(b)(3) is deleted to remove the language that Local Workforce Development Boards (Boards) shall set local policy to "refer to prevocational and vocational training in demand and targeted occupations, or occupations in which there is a reasonable expectation of employment." The subsequent paragraph is renumbered.

Renumbered §849.3(b)(3) replaces the term "job" with "employment."

Section 849.3(c) is deleted and the content relating to coenrollment is moved to new §849.21(c). The subsequent subsection is relettered.

Relettered §849.3(c)(4) is amended to add group career counseling and clarify that the counseling described in §849.3 is available during the period the trade-affected worker receives Trade Readjustment Assistance.

Relettered §849.3(c)(7) is amended to change the reference from REP to IEP and relettered §849.3(c)(10) is amended to change the reference from WIA to WIOA.

Relettered §849.3(c)(11) is amended to include employment services.

Relettered §849.3(c)(12) is amended to clarify that follow-up services are available during training.

New §849.3(c)(13) adds the provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas.

SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES

TWC adopts the following amendments to Subchapter B:

§849.11. General Board Responsibilities

Section 849.11(c) is amended to change the term "participant" to "trade-affected worker" to align with the TAA Final Rule.

Section 849.11(c)(4) is amended to change the reference from "REP" to "IEP" and update the reference to the definition from §849.2(9) to §849.2(8).

§849.12. Participant Responsibilities

Section 849.12 is amended to change the title from "Participant Responsibilities" to "Trade-Affected Worker Responsibilities" to align with the TAA Final Rule.

Section 849.12(2) is amended to remove full-time. Under the TAA Final rule, in some instances, multiple part-time jobs are allowable.

New §849.12(7) is added to include the trade-affected worker's responsibility to review labor market information and expected wage of the new occupation as required by the TAA Final Rule. The subsequent paragraphs are renumbered accordingly.

Renumbered §849.12(9) is amended to change "trade funded" to "trade-approved."

Renumbered §849.12(10) is amended to change "academic status" to "academic standing," "trade funded" to "trade-approved," and "REP" to "IEP."

SUBCHAPTER C. TRADE SERVICES

TWC adopts the following amendments to Subchapter C:

§849.21. Activities Prior to Certification of a Trade Petition

Section 849.21(a) is amended to remove the term long-term employment. References to long-term employment were eliminated in the TAA Final Rule because the concept of long-term employment is included in the definition of suitable employment.

Section 849.21(b) is amended to change layoff assistance to Rapid Response assistance to reflect language in the TAA Final Rule and change the reference from WIA to WIOA.

Section 849.21(b)(1) is amended to add the conditions under which Rapid Response is provided.

Section 849.21(b)(2) is amended to remove "on-site."

New §849.21(b)(3) is added to include the requirements for scheduling Rapid Response services. The subsequent paragraphs are renumbered accordingly.

Renumbered §849.21(b)(4) is amended to change "companies" to "employers."

Renumbered §849.21(b)(5) is amended to clarify initial assessment requirements to align the TAA Program with WIOA.

New §849.21(b)(6) is added to include helping affected workers register in the state's labor exchange system.

Current §849.21(b)(5) and (6) are removed and the removed language is clarified in new §849.21(b)(3).

New §849.21(c)(1) and (2) is added to include the requirement of coenrollment of Trade-affected workers in the WIOA Dislocated Worker program as required in the TAA Final Rule. New §849.21(c)(2) describes the method to document instances when a trade-affected worker declines coenrollment.

§849.22. Postcertification of a Trade Petition

Section 849.22(a)(1) is amended to replace language related to WIA with language related to WIOA.

Section 849.22(a)(2) is amended to change the reference from WIA to WIOA.

Section 849.22(b) is amended to replace the WIA term "intensive" with WIOA term "career services."

Section 849.22(b) is amended to change the reference from REP to IEP.

Section 849.22(b)(1) - (9) is deleted to remove the REP requirements under WIA that are not required under WIOA.

New §849.22(b)(1) - (5) is added to clarify the requirements of an IEP as described in the TAA Final Rule.

Section 849.22(d) is amended to change "Agency's TAA unit" to "Agency's TAA State Office."

§849.23. Training Referrals

Section 849.23 is amended to remove "Referrals" from the section title to align with the language in the TAA Final Rule.

Section 849.23(a)(1) is amended to clarify that TAA training requirements must be met under the TAA Final Rule.

Section 849.23(a)(3) is amended to remove "occupationally specific" and add "be specific to the worker's occupational goal" to align with language in the TAA Final Rule.

Section 849.23(a)(4) is amended to change the term "participant" to "trade-affected worker" to align with the TAA Final Rule.

Section 849.23(a)(5) is amended to clarify that the worker is capable of completing and securing a degree or certificate within the maximum time frame.

Section 849.23(b) is amended to change "intensive and training services" to "career and training services" to align with WIOA language.

Section 849.23(b)(1) is amended to replace "employer-based training" with "work-based training" and new §849.23(b)(2) and (3) are added to include occupational and labor market information. The subsequent paragraphs are renumbered accordingly.

Renumbered §849.23(b)(4) is amended to replace "contextual vocational skills" with "contextualized occupational training" to align with the TAA Final Rule.

SUBCHAPTER D. SUPPORT SERVICES

TWC adopts the following amendments to Subchapter D:

§849.41. Support Services for Dislocated Workers Eligible for Trade Benefits

Section 849.41(a) is amended to update references from WIA to WIOA and remove "co-enrolled in WIA." The requirement for co-enrollment in the WIOA Dislocated Worker is addressed in new §849.21(c)(1).

Section 849.41(b)(2) is amended to clarify transportation services are "local" and remove "that may be provided for participating workers" for clarity.

New §849.41(b)(3) and (4) are added to include "housing assistance, if necessary" and "dependent care" as support services under the TAA Program.

Section 849.41(b)(3) is removed to align with the definition of support services in the TAA Final Rule.

SUBCHAPTER E. COMPLAINTS AND APPEALS

TWC adopts the following amendments to Subchapter E:

§849.51. Appeals of Commission Determinations on Trade Act Activities

Section 849.51(c) is amended to change the term "participant" to "trade-affected worker" to align with the TAA Final Rule.

New §849.51(d) is added to include the requirement to inform trade-affected workers about the circumstances that lead to overpayments and clarify that the Agency's TAA State Office makes final determination for overpayment requests.

§849.52. Discrimination Complaints

Section 849.52(a) is amended to change the term "participant" to "trade-affected worker" to align with the TAA Final Rule.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on June 6, 2022. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§849.1 - 849.3

STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement necessary changes made to align with the updated TAA Final Rule and update references from WIA provisions to WIOA provisions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202416

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: May 6, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES

40 TAC §849.11, §849.12

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement necessary changes made to align with the updated TAA Final Rule and update references from WIA provisions to WIOA provisions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202417

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: May 6, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER C. TRADE SERVICES

40 TAC §§849.21 - 849.23

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement necessary changes made to align with the updated TAA Final Rule and update references from WIA provisions to WIOA provisions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202418

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: May 6, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER D. SUPPORT SERVICES

40 TAC §849.41

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement necessary changes made to align with the updated TAA Final Rule and update references from WIA provisions to WIOA provisions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202419

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: May 6, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER E. COMPLAINTS AND APPEALS

40 TAC §849.51, §849.52

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement necessary changes made to align with the updated TAA Final Rule and update references from WIA provisions to WIOA provisions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2022.

TRD-202202421

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 18, 2022

Proposal publication date: May 6, 2022

For further information, please call: (512) 689-9855



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE

43 TAC §211.6

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts new 43 TAC §211.6, concerning fingerprint requirements for licensing applicants for and holders of a general distinguishing number (GDN) under Transportation Code Chapter 503 for all dealer types listed in Transportation Code §503.029(a)(6). The department adopts §211.6 without changes to the proposed text as published in the April 22, 2022, issue of the *Texas Register* (47 TexReg 2122). The rule will not be republished.

REASONED JUSTIFICATION. New §211.6 is necessary to prevent fraud in the application process by verifying an applicant's identity, as well as the identity of the applicant's representatives who are required to be listed in the application, through submitted fingerprints. Section 211.6 is also necessary to obtain a complete and comprehensive Texas Department of Public Safety (DPS) and Federal Bureau of Investigation (FBI) criminal background check. The department must obtain a complete DPS and FBI criminal history record of the applicant, as well as its representatives who are required to be listed in the application, and check for possible affiliation with any other individual or business entity previously deemed unfit to hold a license, to properly administer Transportation Code §503.034, Occupations Code §53.021 and §2301.651, and 43 TAC §211.3. On renewal or amendment of a license, the department must obtain the complete DPS and FBI criminal history of the license holder, as well as its representatives who are listed in the application, to properly administer Transportation Code §503.038, Occupations Code §53.021 and §2301.651, and §211.3. The department currently has access, via a name-based search, to the criminal history record information that DPS maintains. However, criminals can circumvent the name-based background check by using false or stolen identities. A fingerprint-based background check significantly increases the likelihood that the department can verify the identity of the applicant, as well as the applicant's representatives who are included in the license application. The fingerprints would be collected through a service that requires the individual to show up in person and present identification which must be validated prior to having their fingerprints collected electronically.

Licenses issued by the department create positions of trust. Abuse of this trust provides license holders opportunities to

engage in fraud, theft, money laundering and related crimes. Recently, bad actor license holders have taken advantage of their licenses by printing fraudulent temporary tags, which enable criminals to operate stolen vehicles, facilitating crimes such as human and drug trafficking. Criminals use fraudulently obtained temporary tags that are registered under fake names and addresses to make it harder for law enforcement to trace the vehicles. Fraudulent temporary tags are also used to operate motor vehicles that violate environmental and safety regulations, thus endangering the public.

Section 211.6 is also designed to protect the public even when a fraudulent temporary tag is not at issue. Holders of a GDN license for all dealer types under Transportation Code §503.029(a)(6), as well as their representatives, provide services that involve access to confidential information, conveyance, titling, and registration of private property. Further, license holders and their representatives obtain possession of monies belonging to or owed to private individuals, creditors, and governmental entities. In addition, licensure provides persons who are predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct. Lastly, license holders and their representatives must comply with federal and state environmental and safety regulations.

The fingerprint-based background check will be used to evaluate the criminal history of the applicant, as well as the applicant's representatives who are required to be listed on the department's licensing application, under the department's criminal offense guidelines in §211.3 under Occupations Code §53.021. The DPS criminal history record information is limited to crimes committed in Texas. The FBI criminal history record information includes crimes committed in other states, as well as federal crimes. Human and drug trafficking crimes are commonly prosecuted on a federal level. Also, the FBI fingerprint-based criminal history background check enables the department to obtain the FBI "Rap Back" subscription service, which notifies the department when a person's criminal history record has changed. DPS also provides a "Rap Back" service, which requires fingerprints. The department intends to use information from the FBI and DPS Rap Back services to determine if an associated license should be revoked or not renewed as authorized under applicable statutes and department rules.

New §211.6(a) is added to state that the fingerprint requirements apply to applicants for and holders of a franchised or independent dealer GDN. These license holders and their representatives provide services that involve access to confidential information, conveyance, titling, and registration of private property. Further, license holders and their representatives obtain possession of monies belonging to or owed to private individuals, creditors, and governmental entities. In addition, licensure provides persons who are predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct. Lastly, license holders and their representatives must comply with federal and state environmental and safety regulations.

When the department adopted current Chapter 211, it determined which offenses directly relate to the duties and responsibilities of license holders and their representatives, either because the offense entails a violation of the public trust; issuance of a license would provide an opportunity to engage in further criminal activity of the same type; or the offense demonstrates the person's inability to act with honesty, trustworthiness, and integrity. Such offenses include crimes under the laws of another state and the United States. In proposing new §211.6, the de-

partment determined that requiring a biometric identifier to verify identity and obtain a comprehensive DPS and FBI criminal history record for applicants for and holders of licenses, along with their representatives, will prevent individuals with disqualifying criminal histories from being licensed or renewing their licenses, thus substantially decreasing fraud and providing enhanced protection for citizens of Texas.

New §211.6(b) requires all persons applying for a new license, license amendment due to change in ownership, or license renewal, to submit a complete and acceptable set of fingerprints to DPS and pay required fees for the purpose of obtaining criminal history record information from DPS and the FBI.

New §211.6(c) requires that persons who are acting at the time of application, or will later act, in a representative capacity for an applicant or holder of a license, including the applicant's or holder's officers, directors, members, managers, trustees, partners, principals, or managers of business affairs, must also submit a complete and acceptable set of fingerprints and pay fees to DPS as described by §211.6(b). New §211.6(c) is consistent with §211.2(a)(2) of this chapter because it lists the same representatives for an applicant or holder of a license.

Occupations Code §2301.651(b) gives the board authority to deny an application for a license or take other action against an applicant or "license holder" for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for an applicant or "license holder" that would be cause for denying a license under Chapter 2301. Occupations Code §2301.002(18) defines "license holder" as a person who holds a license or GDN issued under Chapter 2301 or Transportation Code Chapter 503. Occupations Code §2301.651(a) includes bases for which the department may deny an application for a license or revoke or suspend a license, including when the applicant or license holder is unfit under standards described in Chapter 2301 or the board's rules. The fingerprint-based background check will be used to evaluate the criminal history of the applicant, as well as the applicant's representatives who are required to be listed on the department's licensing application, under the department's criminal offense guidelines in §211.3.

Taken together, Occupations Code §2301.651(b), related definitions in §2301.002, and §§2301.251, 2301.255, and 2301.257 provide authority for the department to require applicants to list in the GDN application any individual authorized to act as a representative. Without this information the department could not carry out its statutory responsibility under Chapter 2301 to investigate whether a representative committed a disqualifying act or omission that would prevent the applicant from being licensed as a GDN dealer.

SUMMARY OF COMMENTS.

The department received four written comments in support of the proposed new rule from the Smith County District Attorney's Office, the Dublin Police Department and two individual commenters. The department received four written comments requesting one or more changes in the rule text from the Vidor Police Department, the Fort Bend County Precinct 3 Constable's Office, the Texas Automobile Dealers Association, and an individual commenter.

Comment:

A commenter expressed support for the proposed rule stating that the rule is another positive step in the right direction to restore integrity of the system.

Agency Response:

The department appreciates the support and agrees with the commenter that implementing fingerprinting for GDN dealers will substantially reduce identity fraud in the dealer application process and enable the department to more effectively screen dealer applicants based on criminal history. Also, the department must obtain fingerprints to subscribe to the DPS and FBI Rap Back services to obtain any new criminal history record information on current GDN holders and their representatives to determine whether to revoke, renew, or amend an existing GDN under the department's criminal offense guidelines under §211.3 and Occupations Code §53.021.

Comment:

A commenter expressed support for the rule and is looking forward to further measures the department will take to fight fraud and other crimes. The commenter noted that this rule addresses public safety concerns and that the department has a duty to screen individuals who are collecting and using citizen's personal identifying information.

Agency Response:

The department appreciates the support and has several other initiatives underway to reduce fraud and support law enforcement. The department agrees with the commenter that this rule addresses important public safety concerns and that the department has an important responsibility to effectively screen dealer applicants and not license known bad actors who could continue to commit fraud and other crimes. Also, the department must obtain fingerprints to subscribe to the DPS and FBI Rap Back services to obtain any new criminal history record information on current GDN holders and their representatives to determine whether to revoke, renew, or amend an existing GDN under the department's criminal offense guidelines under §211.3 and Occupations Code §53.021.

Comment:

A commenter supports the new rule noting that an incredible amount of crime has been perpetrated using fraudulent Texas paper tags and endorses all other efforts the department undertakes to prevent the mass issuance of fraudulent paper tags.

Agency Response:

The department appreciates the support. As of June 27, 2022, 75 dealers have been denied access to the temporary tag system used to print paper tags since the department's rule authorizing denial of access (43 TAC §215.505) became effective on January 27, 2022. One of the dealers who has been denied access under §215.505 used a stolen identity to obtain a license from the department. Department staff continue to closely monitor dealer temporary tag usage. Feedback from the law enforcement community is that these efforts have already made a significant difference and that fingerprinting is a crucial next step to prevent bad actors from being licensed.

Comment:

A commenter supports fingerprinting of individuals involved in operating a car dealership and encouraged adoption of the rule.

Agency Response:

The department appreciates the support and agrees that this rule will provide increased protection to Texas citizens.

Comment:

Two commenters recommended that all persons who access the temporary tag system be fingerprinted.

Agency Response:

The department appreciates the comment. Texas Government Code §411.122 allows the department to access criminal history record information only for persons who are applicants or current license holders. So, while owners and certain authorized representatives who have temporary tag system access will be fingerprinted under this rule, the department may not require fingerprints for all persons to whom a dealer may grant temporary tag system access under the dealer's account. Dealers are responsible for managing account access and use and are required to limit authorized users to owners and bona fide employees with a business need to access the database under 43 TAC §215.150. Also, comments on modifying the department's rules regarding the temporary tag database are welcome, but are outside the scope of §211.6.

Comment:

A commenter suggested that all affected persons be fingerprinted immediately, rather than waiting until the existing GDN holders apply to renew their license.

Agency Response:

The department appreciates the comment and shares the commenter's sense of urgency to implement the fingerprint rule. The rule requires all new applicants to be fingerprinted before a license can be issued. Section 211.6 also requires current license holders to be fingerprinted at their next license renewal date which will occur during one of the next 24 months. Over 20,150 current license holders are affected by this rule. Requiring immediate fingerprinting for all current license holders would place a severe burden on license holders, the department, and DPS's vendor that provides identity verification and fingerprinting services. Further, this change would delay implementation of this rule, including the requirement for all new applicants to be fingerprinted. For these reasons, the department will not make this suggested change.

Comment:

A commenter suggested that two-factor authentication should be required to log in to the temporary tag database to prevent unauthorized users from accessing the system.

Agency Response:

The department appreciates the comment and agrees that system security enhancements such as two-factor authentication or multi-factor authentication are helpful in preventing unauthorized system access. The department's Information Technology Services Division is currently evaluating these tools and plans to implement solutions such as these across multiple department systems. Comments on improving temporary tag-related system security are welcome but are outside the scope of §211.6.

Comment:

A commenter suggested adding a new subsection to the rule exempting a person who has been fingerprinted by another Texas agency as the identity of the licensee has previously been vetted. The commenter gave the following examples of a license holder with a set of fingerprints on file with DPS: a license to carry a handgun, a license with the Texas Department of Insurance, and a license regarding motor vehicle sales financing. The commenter also stated that if it was necessary, such

license holder must give the department written authorization so the person's fingerprints are subject to the DPS Rap Back subscription service, so the department can obtain criminal history record updates. The commenter further suggested that the department use electronically readable information from a driver's license, commercial driver's license, or personal identification certificate as an alternative means of establishing a licensee's or applicant's identity. Lastly, the commenter stated that the newly adopted rules regarding temporary tags should be given time to gauge whether there is a need to impose new and additional regulatory demands on licensees.

Agency Response:

The department appreciates the comment. The commenter focused on the department's statement that the purpose of §211.6 is to verify the identity of the applicant. However, the department also stated that the purpose of §211.6 is to provide the department with the applicant's fingerprints so the department can obtain a complete and comprehensive DPS and FBI criminal background check to evaluate the applicant's criminal history under the department's criminal offense guidelines under §211.3.

Section 211.3 authorizes the department to deny an application for a license, as well as to revoke the license of an existing licensee. The department must obtain the complete DPS and FBI criminal history record of the applicant, as well as its representatives who are listed in the application, and check for possible affiliation with any other individual or business entity previously deemed unfit to hold a license, to properly administer Transportation Code §503.034, Occupations Code §53.021 and §2301.651, and §211.3. The department must also obtain fingerprints to subscribe to the DPS and FBI Rap Back services to obtain any new criminal history record information on current GDN holders and their representatives to determine whether to revoke an existing GDN under the department's criminal offense guidelines under §211.3 and Occupations Code §53.021.

DPS interprets Government Code §411.087(d)(1) to require the department to provide fingerprints for applicants and license holders as a prerequisite to receiving criminal history record information from the system containing DPS and FBI fingerprint-based criminal history records. A state agency that receives criminal history record information from DPS is not authorized to share that criminal history record information with another state agency. The department must obtain the criminal history record information on the applicant and the people who are listed in the applicant's application to determine whether the application must be denied under the department's criminal offense guidelines under §211.3. Even though another Texas state agency issued a license to an applicant after obtaining the applicant's fingerprint-based criminal history record information, the department might reject an application from the same applicant under the department's criminal offense guidelines under §211.3. Different Texas state agencies have different criminal offense guidelines, which are customized for each state agency using the criteria under Occupations Code §53.021. Section 53.021(a) includes an offense that directly relates to the duties and responsibilities of the licensed occupation.

Even if DPS authorized the department to obtain criminal history record information under §411.087(d)(1) based on fingerprints on file for another Texas state agency, the department would choose to have applicants and license holders provide fingerprints as part of an application for a GDN under §211.6. Otherwise, an applicant for a GDN could impersonate someone else if they knew the person has fingerprints on file with DPS. For

example, if the applicant knows someone who has a license to carry a handgun, the applicant could impersonate this person when applying for a GDN from the department.

The department agrees that the use of electronically readable information from a driver's license, commercial driver's license, or personal identification certificate is a valuable tool to establish a license holder's or applicant's identity, and this method is used by DPS's vendor to confirm identity. However, it is not an alternative to fingerprinting as the department must also obtain the complete DPS and FBI criminal history record information on any applicant and license holder, as well as its representatives who are listed in the application. While not all dealer categories have been associated with temporary tag fraud, the department's existing background check process has found applicants in all dealer categories that have been convicted of other forms of fraud and serious crimes including forgery, making a false statement, tampering with a government record, theft, aggravated assault, and delivery of a controlled substance. A fingerprint requirement is warranted for all dealers and will provide increased protection for the citizens of Texas. For these reasons, the department will not make these suggested changes.

The commenter focused on the fraudulent issuance of temporary tags and stated that the department's newly implemented rules regarding temporary tags should be given time to gauge whether there is a need to impose new and additional regulatory demands on licensees. As previously stated in this adoption order, the purpose of §211.6 is not limited to combatting temporary tag fraud. The department must implement §211.6 as soon as possible to protect the public. Section 211.6(b) was designed to lessen the burden on GDN applicants by only requiring the submission of fingerprints once for an active license.

STATUTORY AUTHORITY. The department adopts new §211.6 under Occupations Code §2301.155; and Transportation Code §503.002 and §1002.001.

Occupations Code §2301.155 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

Transportation Code §503.002 authorizes the board to adopt rules for the administration of Transportation Code Chapter 503.

Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2301.651; Transportation Code §503.034 and §503.038; and Government Code §§411.084, 411.087 and 411.122.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2022

TRD-202202455

Elizabeth Brown Fore

General Counsel

Texas Department of Motor Vehicles

Effective date: September 1, 2022

Proposal publication date: April 11, 2022

For further information, please call: (512) 465-5665



CHAPTER 215. MOTOR VEHICLE
DISTRIBUTION
SUBCHAPTER G. WARRANTY
PERFORMANCE OBLIGATIONS

43 TAC §215.207

INTRODUCTION. The Texas Department of Motor Vehicles adopts amendments to 43 TAC §215.207 concerning final orders for contested cases. These amendments are necessary to implement amended Occupations Code §2301.713, concerning motions for rehearing on contested cases involving vehicle warranties, and to more closely conform the rule language with Occupations Code §2301.711. The department adopts §215.207 without changes to the proposed text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2498). The rule will not be republished.

REASONED JUSTIFICATION. House Bill 3514, 87th Legislature, Regular Session (2021) amended Occupations Code §2301.713, regarding motions for rehearing on contested cases that arise under Occupations Code §2301.204 or Subchapter M of Chapter 2301. The amendments authorize the chief hearings examiner to designate a person to decide the motions for rehearing. Under Occupations Code §2301.711, any of the department's hearings examiners are authorized to sign final orders in these matters. Existing rule language only authorizes the chief hearing's examiner to respond to motions for rehearing and sign subsequent final orders. The amendments to §215.207 implement this new delegation authority and eliminate any potential, inadvertent conflict between the statute and the department's rule.

The amendment to subsection (a) clarifies that the final order that is the subject of the motion for rehearing may be issued by the board or a delegated person, in accordance with Occupations Code §2301.711.

The amendment to subsection (b) clarifies that the final order may be prepared and signed by any of the department's hearings examiners, in accordance with Occupations Code §2301.104 and §2301.711.

The amendment to paragraph (c)(1) implements the amendments to Occupations Code §2301.713 by removing language that only authorizes the chief hearings examiner to decide motions for rehearing.

An amendment to subsection (e) implements the amendments to Occupations Code §2301.713 by adding language that allows for the chief hearings examiner's designee to rule on a motion for rehearing. Subsection (e) is also amended to remove a limitation that only the chief hearings examiner can sign a new final order granting the relief requested in the motion for rehearing, to avoid any conflict and to more closely conform with the authority under Occupations Code §2301.711.

An amendment to subsection (f) removes language that is duplicative of Occupations Code §2301.751 and §2301.752 to avoid any inadvertent conflicts with those sections. Occupations Code §2301.751 addresses the courts in which a party may seek judicial review of an action; Occupations Code §2301.752 addresses the deadline for filing a petition for judicial review. An amendment also clarifies that the petition is a petition for judicial review.

SUMMARY OF COMMENTS. No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts amendments to §215.207 under Occupations Code §2301.713 and Transportation Code §1002.001.

Occupations Code §2301.713 authorizes the department to adopt rules to establish procedures for motions for rehearing under Occupations Code §2301.204 or Subchapter M of Chapter 2301.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2301.711 and §2301.713.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2022.

TRD-202202456

Elizabeth Brown Fore

General Counsel

Texas Department of Motor Vehicles

Effective date: July 20, 2022

Proposal publication date: April 29, 2022

For further information, please call: (512) 465-5665



SUBCHAPTER J. ADMINISTRATIVE
SANCTIONS

43 TAC §215.505

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §215.505 concerning denial of access to the temporary tag system. The amendments to §215.505 are necessary to clarify the rule text. The department adopts §215.505 without changes to the proposed text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2499). The rule will not be republished.

REASONED JUSTIFICATION. The amendments to §215.505 are necessary to correct a statutory citation regarding the department's temporary buyer's tag database under Transportation Code §503.0631, to add parentheses around text in §215.505(a)(2) that explains when a vehicle is presumed to not be in the dealer's or converter's inventory, and to change the word "and" to "or" in §215.505(a)(2) in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag database" under §215.505. Section 215.505 contains the process for denial of access to the temporary tag database under Transportation Code §503.0632(f) when the department determines that a dealer or converter is fraudulently obtaining temporary tags from the temporary tag database.

The department adopted these same amendments through an emergency rule with an immediate effective date of April 14, 2022, as published in the Emergency Rules section of the April 29, 2022, issue of the *Texas Register* (47 TexReg 2387). However, emergency rules adopted under Government Code §2001.034 may not be effective for longer than 120 days and may not be renewed for longer than 60 days. The purpose of

this adoption order is to make the amendments to §215.505 permanent. Government Code §2001.034 authorizes a state agency to adopt a rule that is identical to the emergency rule under Government Code §2001.023 and §2001.029.

These amendments are necessary because a subset of dealers will fraudulently obtain temporary tags from the temporary tag database without clarification of the rule text. Fraudulently obtained temporary tags pose a threat to the public health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags to persons who engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement. Criminals use fraudulently obtained temporary tags that are registered under fake names and addresses to make it harder for law enforcement to trace the vehicles. Fraudulently obtained temporary tags also pose a threat to the public health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags to persons who operate uninsured and uninspected vehicles that are hazards to Texas motorists and the environment. Fraudulently obtained temporary tags further pose a threat to the public health, safety, and welfare because criminals can attempt to sell stolen vehicles or unsafe salvage vehicles to unsuspecting buyers by using temporary tags to make the vehicles appear legitimate. Criminals have fraudulently obtained temporary tags from the department's system and used the temporary tags in Texas, as well as other states, such as New York and Nevada. In addition, the use of fraudulently obtained temporary tags could deprive the state of revenue. Criminals will take advantage of any loopholes they see as available to them.

An amendment to §215.505(a) corrects a statutory citation regarding the department's buyer's temporary tag database under Transportation Code §503.0631, which governs the buyer's temporary tag database. Section 215.505(a) cites to Transportation Code §503.06321, which does not exist. Section 215.505 applies to the dealer's and converter's temporary tag database under Transportation Code §503.0626, as well as the buyer's temporary tag database under Transportation Code §503.0631. Amendments to §215.505(a)(2) add parentheses around text that explains when a vehicle is presumed to not be in the dealer's or converter's inventory. The parentheses were included when §215.505(a)(2) was published for proposal in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7752); however, they were inadvertently omitted in the adoption

order that was published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 662). Another amendment to §215.505(a)(2) changes the word "and" to "or" in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag database" under §215.505. Together, these clarifying amendments will close any perceived loopholes that criminals might otherwise try to exploit.

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts amendments to §215.505 under Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§503.0626, 503.0631, 503.0632, and 503.067.

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 1, 2022.

TRD-202202471

Elizabeth Brown Fore

General Counsel

Texas Department of Motor Vehicles

Effective date: July 21, 2022

Proposal publication date: April 29, 2022

For further information, please call: (512) 465-5665



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the Department) files this notice of intent to review the rules in Texas Administrative Code, Title 4, Part 1, Chapter 17, Subchapter B, Livestock Facilities; Subchapter D, Certification of Farmers Market; Subchapter G, GO TEXAN Partner Program Rules; and Subchapter J, GO TEXAN Certified Retirement Community Program.

This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Karen Reichek, Administrator for Trade and Business Development, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at Karen.Reichek@TexasAgriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202202534

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: July 6, 2022

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter P, Appeal Procedures for the Food and Nutrition Programs, pursuant to Texas Government Code, §2001.039 (Agency Review of Existing Rules). The Department considered whether the reasons for the adoption of these rules continue to exist.

Notice of the rule review was published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 9063). No comments were received as a result of that notice.

After its review, the Department proposes the repeal of Chapter 1, Subchapter P in its entirety. In conjunction with this proposed repeal, new Chapter 26, Subchapter E is proposed in this issue of the *Texas Register*.

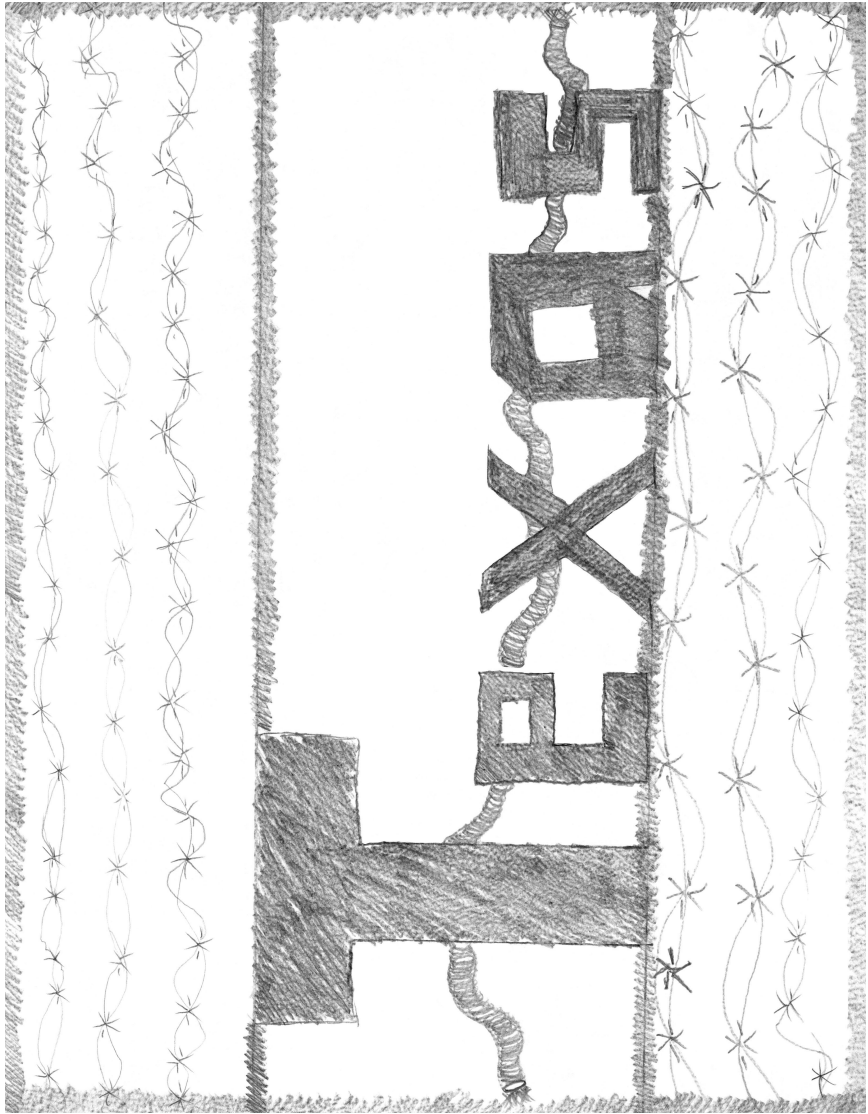
TRD-202202470

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: July 1, 2022



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §102.1307(d)

Innovation District

~~[Please submit, on district letterhead, a letter to the commissioner of education stating the date that the board of trustees adopted a resolution to develop a local innovation plan for the designation of the district as an Innovation District.]~~

A local innovation plan must be developed for a school district before the district may be designated as an Innovation District. A local plan must provide for a comprehensive educational program for the district, which may include:

- 1) Innovative Curriculum
- 2) Instructional Methods
- 3) Community Participation
- 4) Governance of Campuses
- 5) Parental Involvement
- 6) Modifications to the school ~~[day or]~~ year
- 7) Provisions regarding the district budget and sustainable program funding
- 8) Accountability and assessment measures that exceed the requirements of state and federal law; and
- 9) Any other innovations prescribed by the board of trustees.

A local innovation plan must identify requirements imposed by the Education Code that inhibit the goals of the plan from which the district should be exempted on adoption of the plan. The local innovation plan should specify the manner in which a particular statute inhibits one or more goals of the plan. Please use the form below to check the statutes specifically identified in your district's local innovation plan as inhibiting a goal of the plan. Checking a specific statute does not necessarily indicate eligibility for an exemption from all subsections of the statute. ~~[The local innovation plan controls with regard to the specific exemptions adopted by a district.]~~ The form below provides a reporting mechanism to fulfill the reporting requirements of the statute. Entire sections of code may not be eligible for exemption and each district should consult its legal counsel in developing its innovation plan.

Exemptions claimed for an Innovation District apply only to the specific provision of the Texas Education Code (TEC) cited, which may or may not be governed by a separate legal requirement. The exemption does not relieve the district of any requirement imposed by other state or federal law or a duty imposed under federal regulation, grant compliance, agency rule applicable to a charter school or a local legal requirement. Each district should consult its legal counsel to ensure adoption of necessary local policies to ensure compliance with all applicable legal requirements.

Please note that this is not an exhaustive list of exemptions.

[District Name: _____ CDN: _____]

Term of Plan: _____ [to] _____
[month day year month day year]

- Plan applies to: Entire District
 Campus (list) _____
 Other (please describe) _____

Chapter 11 – School Districts

Subchapter D. Powers and Duties of Board of Trustees of Independent School Districts

- §11.1511 (b)(5), (14) Specific Powers and Duties of Board
- §11.162 School Uniforms

Subchapter F. District-Level and Site Based Decision-Making

- §11.251 Planning and Decision-Making Process
- §11.252 District-Level Planning and Decision-Making
- §11.253 Campus Planning and Site-Based Decision-Making
- §11.255 Dropout Prevention Review

Chapter 21 – Educators

Subchapter A – General Provisions

- §21.002 Teacher Employment Contracts
- §21.003 Certification Required
- §21.0031 Failure to Obtain Certification; Contract Void

Subchapter B – Certification of Educators

- §21.051 Rules Regarding Field-Based Experience and Options for Field Experience and Internships.
- §21.053 Presentation and Recording of Certificates
- §21.057 Parental Notification

Subchapter C – Probationary Contracts

- §21.102 (Probationary Contract)

Subchapter D – Continuing Contracts

Subchapter E – Term Contracts

Subchapter H – Appraisals and Incentives

- §21.352 Local Role
- §21.353 Appraisal on Basis of Classroom Teaching Performance
- §21.354 Appraisal of Certain Administrators
- §21.3541 Appraisal and Professional Development System for Principals

Subchapter I – Duties and Benefits

- §21.401 Minimum Service Required
- §21.402 Minimum Salary Schedule for Certain Professional Staff

- §21.4021 Furloughs
- §21.4022 Required Process for Development of Furlough Program or Other Salary Reduction Proposal
- §21.403 Placement on Minimum Salary Schedule
- §21.4031 Professional Staff Service Records
- §21.4032 Reductions in Salaries of Classroom Teachers and Administrators
- §21.404 Planning and Preparation Time
- §21.405 Duty-Free Lunch
- §21.406 Denial of Compensation Based On Absence for Religious Observance Prohibited
- §21.407 Requiring or Coercing Teachers to Join Groups, Clubs, Committees, or Organizations: Political Affairs
- §21.408 Right To Join or Not To Join Professional Association
- §21.409 Leave Of Absence for Temporary Disability
- §21.415 Employment Contracts

Subchapter J – Staff Development

- §21.451 Staff Development Requirements
- §21.452 Developmental Leaves of Absence
- §21.458 Mentors

Chapter 22 – School District Employees and Volunteers

Subchapter A – Rights, Duties, and Benefits

- §22.001 Salary Deductions for Professional Dues
- §22.002 Assignment, Transfer, or Pledge of Compensation
- §22.003 Minimum Personal Leave Program
- §22.006 Discrimination Based on Jury Service Prohibited
- §22.007 Incentives for Early Retirement
- §22.011 Requiring or Coercing Employees to Make Charitable Contributions

Chapter 25 – Admission, Transfer, and Attendance

Subchapter C – Operation of Schools and School Attendance

- §25.0811 First Day of Instruction
- §25.0812 Last Day of School
- §25.083 School Day Interruptions
- §25.092 Minimum Attendance for Class Credit or Final Grade

Subchapter D – Student/Teacher Ratios; Class Size

- §25.111 Student/Teacher Ratios
- §25.112 Class Size
- §25.113 Notice of Class Size
- §25.114 Student/Teacher Ratios in Physical Education Classes; Class Size

Chapter 37 – Discipline; Law and Order

Subchapter A – Alternative Setting for Behavior Management

- §37.0012 Designation of Campus Behavior Coordinator
- §37.002 Removal by Teacher

Chapter 44 –Fiscal Management

Subchapter B – Purchases; Contracts

- §44.031 Purchasing Contracts
- §44.0331 Management Fees Under Certain Cooperative Purchasing Contracts
- §44.0352 Competitive Sealed Proposals
- §44.042 Preference to Texas and United States Products
- §44.043 Right To Work
- §44.047 Purchase or Lease of Automated External Defibrillator

Subchapter Z – Miscellaneous Provisions

- §44.901 Energy Savings Performance Contracts
- §44.902 Long-Range Energy Plan to Reduce Consumption of Electric Energy
- ~~§44.903 Energy Efficient Light Bulbs in Instructional Facilities~~
- §44.908 Expenditure of Local Funds

Chapter 45 – School District Funds

Subchapter G – School District Depositories

- §45.205 Term of Contract
- §45.206 Bid Or Request for Proposal Notices; Bid and Proposal Forms
- §45.207 Award of Contract
- §45.208 Depository Contract; Bond
- §45.209 Investment of District Funds

Other

[An adopted exemption from Texas Education Code for which there is no corresponding checkbox above must be added to this section.] [Please list any additional exemption required for your Innovation District Plan:]

Figure: 25 TAC §265.190(f)(5)

| <u>Required Pool Sign or Signs</u> | <u>Letter and Symbol Size</u> |
|--|-------------------------------|
| <u>"WARNING-NO LIFEGUARD ON DUTY" (Where no lifeguard required or provided.)</u> | <u>4 inches</u> |
| <u>"NO DIVING" and International No Diving Symbol (Where no lifeguard required or provided.)</u> | <u>4 inches</u> |
| <u>"IN CASE OF EMERGENCY, DIAL 911"</u> | <u>4 inches</u> |
| <u>Precise Location of the Pool on or with the Emergency Phone (address, directions, GPS location, or building number, as appropriate)</u> | <u>Minimum 1-inch</u> |
| <u>Hours of Operation</u> | <u>Minimum 1-inch</u> |
| <u>Directions to and Location of Emergency Phone if Phone Not Visible in Pool Yard</u> | <u>Minimum 2-inches</u> |
| <u>Maximum User Load Limit</u> | <u>Minimum 2-inches</u> |
| <u>"PETS IN THE POOL ARE PROHIBITED"</u> | <u>Minimum 2-inches</u> |
| <u>"DO NOT SWIM IF YOU HAVE BEEN ILL WITH DIARRHEA WITHIN THE PAST 2 WEEKS"</u> | <u>Minimum 2-inches</u> |
| <u>"CHANGING DIAPERS WITHIN 6 FEET OF THE POOL IS PROHIBITED"</u> | <u>Minimum 2-inches</u> |
| <u>"GLASS ITEMS NOT ALLOWED IN THE POOL YARD"</u> | <u>Minimum 2-inches</u> |
| <u>"PERSONS UNDER THE AGE OF 14 MUST NOT BE IN THE POOL WITHOUT ADULT SUPERVISION"</u> | <u>Minimum 2-inches</u> |
| <u>"EXTENDED BREATH HOLDING ACTIVITIES ARE DANGEROUS AND PROHIBITED"</u> | <u>Minimum 2-inches</u> |

Figure: 25 TAC §265.190(h)(4)

| <u>Required Spa Signs</u> | <u>Letter and Symbol Size</u> |
|---|--------------------------------------|
| <u>"WARNING – NO LIFEGUARD ON DUTY" (if no lifeguard is provided or required)</u> | <u>4 inches</u> |
| <u>"DO NOT USE THE SPA IF THE WATER TEMPERATURE IS ABOVE 104 DEGREES FAHRENHEIT"</u> | <u>Minimum 1-inch</u> |
| <u>Maximum User Load</u> | <u>Minimum 1-inch</u> |
| <u>Location of the nearest emergency phone or device</u> | <u>Minimum 2-inches</u> |
| <u>EMERGENCY SPA SHUTOFF</u> | <u>Minimum 2-inches</u> |
| <u>"DO NOT SWIM IF YOU HAVE BEEN ILL WITH DIARRHEA WITHIN THE PAST 2 WEEKS"</u> | <u>Minimum 2-inches</u> |
| <u>"PERSONS UNDER THE AGE OF 14 MUST NOT BE IN THE SPA WITHOUT ADULT SUPERVISION"</u> | <u>Minimum 2-inches</u> |
| <u>"PETS IN THE SPA ARE PROHIBITED"</u> | <u>Minimum 2-inches</u> |

Figure: 25 TAC §265.193(c)

| <u>Required Chemical Levels</u> | | | |
|--|--------------------------|--------------------------|--------------------|
| <u>Disinfectant Level</u> | <u>Minimum</u> | <u>Ideal</u> | <u>Maximum</u> |
| <u>Pool Free Available Chlorine</u> | <u>1.0 ppm</u> | <u>2.0 – 3.0 ppm</u> | <u>8.0 ppm</u> |
| <u>Spa Free Available Chlorine</u> | <u>2.0 ppm</u> | <u>3.0 ppm</u> | <u>8.0 ppm</u> |
| <u>Pool Bromine</u> | <u>3.0 ppm</u> | <u>4.0 – 6.0 ppm</u> | <u>10.0 ppm</u> |
| <u>Spa Bromine</u> | <u>4.0 ppm</u> | <u>5.0 ppm</u> | <u>10.0 ppm</u> |
| <u>Combined Chlorine</u> | <u>None</u> | <u>None</u> | <u>0.4 ppm</u> |
| <u>pH</u> | <u>Not less than 7.0</u> | <u>7.2 – 7.6</u> | <u>7.8</u> |
| <u>Cyanuric Acid</u> | <u>None</u> | <u>30 – 50 ppm</u> | <u>100 ppm</u> |
| <u>ORP</u> | <u>600 mV</u> | <u>650 – 750 mV</u> | <u>900 mV</u> |
| <u>Alkalinity</u> | <u>60 ppm</u> | <u>60 ppm – 180 ppm</u> | <u>>180 ppm</u> |
| <u>Calcium Hardness in Pools</u> | <u>150 ppm</u> | <u>>150 – 400 ppm</u> | <u>1000 ppm</u> |
| <u>Calcium Hardness in Spas</u> | <u>100 ppm</u> | <u>150 – 400 ppm</u> | <u>800 ppm</u> |

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - May 2022

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period May 2022 is \$69.22 per barrel for the three-month period beginning on February 1, 2022, and ending April 30, 2022. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of May 2022, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period May 2022 is \$4.00 per mcf for the three-month period beginning on February 1, 2022, and ending April 30, 2022. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 2022, from a qualified low-producing well, is not eligible for credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of May 2022 is \$109.26 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of May 2022, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of May 2022 is \$8.16 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from gas produced during the month of May 2022, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202202480
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: July 1, 2022

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, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/11/22 - 07/17/22 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 07/11/22 - 07/17/22 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009³ for the period of 07/01/22 - 07/31/22 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 07/01/22 - 07/31/22 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-202202507
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 5, 2022

Texas Education Agency

Request for Applications (RFA) Concerning Generation Twenty-Eight Open-Enrollment Charter Application (RFA #701-23-101)

Filing Authority. Texas Education Code (TEC), §12.101

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-23-101 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the applicant team must attend one required applicant information session webinar. In addition, the board president of the sponsoring entity, if identified, must attend. Two webinars will be held virtually on Friday, July 22, 2022, and Friday, July 29, 2022. The public may participate virtually in either, or both, webinars by registering in advance at https://us02web.zoom.us/webinar/register/WN_m0LvQnF8QwyZ2-AnuPAITQ.

Registrants will receive a confirmation email containing information about joining each webinar. The webinars will also be recorded and made available publicly; however, failure to attend at least one of the mandatory webinars in its entirety will disqualify an applicant from further consideration during the Generation Twenty-Eight 28 application cycle.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located

in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be nonsectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Texas Student Data System, Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. An electronic version of the completed application must be submitted to TEA by 5:00 p.m. (Central Time), Friday, November 4, 2022, to be eligible for review.

Project Amount. TEC, §12.106, specifies the following.

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under TEC, Chapter 48, equal to the amount of funding per student in weighted average daily attendance, excluding the adjustment under TEC, §48.052, the funding under TEC, §§48.101, 48.110, 48.111, and 48.112, and enrichment funding under TEC, §48.202(a), to which the charter holder would be entitled for the school under TEC, Chapter 48, if the school were a school district without a tier one local share for purposes of TEC, §48.266.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), the amount of the allotment under TEC, §48.102, is based solely on the basic allotment to which the charter holder is entitled and does not include any amount based on the allotment under TEC, §48.101.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school an allotment per student in average daily attendance in an amount equal to the difference between the product of the quotient of the total amount of funding provided to eligible school districts under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the sum of one and the quotient of the total number of students in average daily attendance in school districts that receive an allotment

under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts statewide; and \$125.

(a-3) In addition to the funding provided by subsections (a) and (a-2), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under TEC, §48.202, based on the state average tax effort.

(a-4) In addition to the funding provided by subsections (a), (a-2), and (a-3), a charter holder is entitled to receive funding for the open-enrollment charter school under TEC, §48.110 and §48.112, and TEC, Chapter 48, Subchapter D, if the charter holder would be entitled to the funding if the school were a school district. In addition, under TEC §48.109(a) a charter school is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation for each identified student in a program for gifted and talented students that the charter school certifies to the commissioner as complying with Subchapter D, Chapter 29. TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in TEC, §12.101. There are currently 191 charters approved under TEC, §12.101 (Subchapter D). There is a cap of 305 charters approved under TEC, §12.101. The commissioner is scheduled to consider awards under RFA #701-23-101 in May 2023.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication Generation Twenty-Eight Open-Enrollment Charter Application (RFA #701-23-101), which includes an application and guidance, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter

School Authorizing and Administration, Texas Education Agency, at (512) 463-9575 or charterapplication@tea.texas.gov.

TRD-202202547

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 6, 2022



Request for Applications (RFA) Concerning Generation Twenty-Eight Open-Enrollment Charter Application (RFA #701-23-102)

Filing Authority. Texas Education Code (TEC), §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-23-102 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public colleges or universities and Texas public junior colleges. The supervising faculty member with oversight of the college of education requesting the charter must attend one required applicant information session webinar. Two webinars will be held virtually on Friday, July 22, 2022, and Friday, July 29, 2022. The public may participate virtually in either, or both, webinars by registering in advance at https://us02web.zoom.us/webinar/register/WN_m0LvQnF8QwyZ2-AnuPAITQ. Registrants will receive a confirmation email containing information about joining each webinar. The webinars will also be recorded and made available publicly; however, failure to attend at least one of the mandatory webinars in its entirety will disqualify an applicant from further consideration during the Generation Twenty-Eight application cycle.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. A public senior college or university or public junior college open-enrollment charter school may operate on a campus of the public college or university or public junior college or in the same county in which the public college or university or public junior college is located and, under certain circumstances, elsewhere in the state.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be nonsectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Texas Student Data System, Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of

the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The electronic version of the completed application must be submitted to TEA by 5:00 p.m. (Central Time), Friday, November 4, 2022, to be eligible for review.

Project Amount. TEC, §12.106, specifies the following.

(a) Effective September 1, 2019, a charter holder is entitled to receive for the open-enrollment charter school funding under TEC, Chapter 48, equal to the amount of funding per student in weighted average daily attendance, excluding the adjustment under TEC, §48.052, the funding under TEC, §§48.101, 48.110, 48.111, and 48.112, and enrichment funding under TEC, §48.202(a), to which the charter holder would be entitled for the school under TEC, Chapter 48, if the school were a school district without a tier one local share for purposes of TEC, §48.266.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), the amount of the allotment under TEC, §48.102, is based solely on the basic allotment to which the charter holder is entitled and does not include any amount based on the allotment under TEC, §48.101.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school an allotment per student in average daily attendance in an amount equal to the difference between the product of the quotient of the total amount of funding provided to eligible school districts under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the sum of one and the quotient of the total number of students in average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts statewide; and §125.

(a-3) In addition to the funding provided by subsections (a) and (a-2), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under TEC, §48.202, based on the state average tax effort.

(a-4) In addition to the funding provided by subsections (a), (a-2), and (a-3), a charter holder is entitled to receive funding for the open-enrollment charter school under TEC, §48.110 and §48.112, and TEC, Chapter 48, Subchapter D, if the charter holder would be entitled to the funding if the school were a school district. In addition, under TEC §48.109(a) a charter school is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation for each identified student in a program for gifted and talented students that the charter school certifies to the commissioner as complying with Subchapter D, Chapter 29.

TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child

would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There are currently six charters approved under TEC, §12.152 (Subchapter E). There is no cap on the number of charters approved under TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-23-102 in May 2023.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication College or University Generation Twenty-Eight Open-Enrollment Charter Application (RFA #701-23-102), which includes an application and guidance, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Authorizing and Administration, Texas Education Agency, at (512) 463-9575 or charterapplication@tea.texas.gov.

TRD-202202548

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 6, 2022

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, 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 15, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the

commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **August 15, 2022**. 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: Austin Independent School District; DOCKET NUMBER: 2021-0355-EAQ-E; IDENTIFIER: RN110523404; LOCATION: Austin, Travis County; TYPE OF FACILITY: school; RULES VIOLATED: 30 TAC §213.4(j) and Edwards Aquifer Protection Plan Number 11001333, Standard Conditions Numbers 1, 2, and 6, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge/Contributing Zone; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: City of Meadow; DOCKET NUMBER: 2021-1525-PWS-E; IDENTIFIER: RN101453884; LOCATION: Meadow, Terry County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.010 milligrams per liter for arsenic based on a running annual average; 30 TAC §290.122(b)(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 Executive Director regarding the failure to comply with the MCL for arsenic for the second quarter of 2021; and 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 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 calendar years 2019 and 2020; PENALTY: \$3,850; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2021-0554-AIR-E; IDENTIFIER: RN100216761; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.110(a) and §122.143(4), Federal Operating Permit (FOP) Number O1419, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §116.116(a)(1) and §122.143(4), FOP Number O1419, GTC and Special Terms and Conditions Number 20, and THSC, §382.085(b), by failing to comply with the representations with regard to construction plans and operation procedures in a permit application; PENALTY: \$23,812; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$9,525; ENFORCEMENT COORDINATOR:

Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2021-1430-AIR-E; IDENTIFIER: RN105508824; LOCATION: La Porte, Harris County; TYPE OF FACILITY: pipeline; RULE VIOLATED: Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent unauthorized emissions; PENALTY: \$202,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$101,250; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Global Fiberglass Solutions of Texas, LLC; DOCKET NUMBER: 2022-0065-IHW-E; IDENTIFIERS: RN102297579 and RN110287299; LOCATION: Sweetwater, Nolan County; TYPE OF FACILITY: recycling facility and wind turbine blade storage; RULES VIOLATED: 30 TAC §335.2(a) and (b), by failing to not cause, suffer, allow, or permit the unauthorized storage of industrial solid waste (ISW); and 30 TAC §335.9(a)(1), by failing to keep records of all hazardous and ISW activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal; PENALTY: \$13,200; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: LITTLE SAM INCORPORATED dba Little Sam 5; DOCKET NUMBER: 2022-0228-PST-E; IDENTIFIER: RN102363017; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: \$5,575; ENFORCEMENT COORDINATOR: Carolyn Kent, (512) 239-2536; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: NORTHPOINT INVESTMENT LLC dba The North Point; DOCKET NUMBER: 2021-1531-PST-E; IDENTIFIER: RN101813327; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009; PENALTY: \$3,937; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Seabrook Seafood, Incorporated; DOCKET NUMBER: 2021-1487-PWS-E; IDENTIFIER: RN100863125; LOCATION: Kemah, Galveston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 total trihalomethanes, based on the locational running annual average; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to submit a Disinfection Level Quarterly

Operating Report to the ED by the tenth day of the month following the end of each quarter for the second quarter of 2020; PENALTY: \$1,962; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Sonnyreena corporation dba Retail King Mart; DOCKET NUMBER: 2022-0183-PST-E; IDENTIFIER: RN102957636; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(a)(2) and (c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to ensure the UST corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection, also, failing to inspect the impressed corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly, and additionally, failing to test the corrosion protection system for operability and adequacy at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$7,699; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Sweeny Cogeneration LLC; DOCKET NUMBER: 2021-1544-AIR-E; IDENTIFIER: RN100217033; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: steam and air-conditioning supply plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O950, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance, and failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$4,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,800; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Texas Sigma Partners, LLC; DOCKET NUMBER: 2022-0166-AIR-E; IDENTIFIER: RN111126124; LOCATION: Winnsboro, Wood County; TYPE OF FACILITY: granulation fertilizer plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance conditions; 30 TAC §101.201(e) and THSC, §382.085(b), by failing to submit an initial notification no later than 24 hours after the discovery of an excess opacity event; and 30 TAC §106.6(b) and §116.110(a), Permit by Rule Registration Number 163167, and THSC, §382.0518(a) and §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum emissions rates in any certified registration, and failing to obtain authorization prior to construction or modification of a source of air emissions; PENALTY: \$23,750; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: UNION CARBIDE CORPORATION; DOCKET NUMBER: 2022-0023-AIR-E; IDENTIFIER: RN102181526; LOCATION: Seadrift, Calhoun County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O2035, General Terms and Conditions (GTC) and Special Terms and Condi-

tions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 47901, 48643, and 48645, Special Conditions Number 1, FOP Numbers O2028, O2031, and O2035, GTC and STC Numbers 10, 12, and 17, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$19,225; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,690; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: Winkler Water Supply Corporation; DOCKET NUMBER: 2022-0209-PWS-E; IDENTIFIER: RN101212017; LOCATION: Streetman, Navarro County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation, which includes both high level and floor level screened and louvered vents, a fan which is located and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent, and a fan switch located outside, for enclosures containing more than one operating 150-pound cylinder of chlorine; 30 TAC §290.46(e)(6)(A) and THSC, §341.033(a), by failing to use at least one operator who holds a Class B or higher surface water license who, if part-time, is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class C or higher surface water license; 30 TAC §290.46(f)(2) and (3)(A)(i)(I), (iv), and (B)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(z), by failing to create a nitrification action plan for all systems distributing chloraminated water; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$2,838; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: WOODCREEK WATER CORPORATION OF LIBERTY COUNTY; DOCKET NUMBER: 2022-0219-PWS-E; IDENTIFIER: RN102691797; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2) and (3)(A)(iii), (B)(iv) and (v), (D)(ii), and (E)(iv), 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(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and/or associated late fees for

TCEQ Financial Administration Account Number 91460099 for Fiscal Year 2022; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: WOODCREEK WATER CORPORATION OF LIBERTY COUNTY; DOCKET NUMBER: 2022-0210-PWS-E; IDENTIFIER: RN102691441; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2) and (3)(A)(iii), (B)(iv) and (v), (D)(ii), and (E)(iv), 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(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 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; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$2,150; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202202499

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 5, 2022



Notice of Correction to Agreed Order Number 5

In the December 3, 2021, issue of the *Texas Register* (46 TexReg 8266), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 5, for Monarch Utilities I, L.P., Docket Number 2021-0550-PWS-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "Monarch Utilities I L.P."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202202500
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: July 5, 2022



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Dipesh Limbad dba Last Chance: SOAH Docket No. 582-22-04266; TCEQ Docket No. 2021-0458-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 28, 2022

**William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 15, 2021 concerning assessing administrative penalties against and requiring certain actions of Dipesh Limbad dba Last Chance, for violations in Hood County, Texas, of: Texas Water Code §26.3475(b), and (c)(1), 30 Texas Administrative Code §334.50(b)(1)(A) and (b)(2)(B)(i)(I), and TCEQ Agreed Order, Docket No. 2018-0184-PST-E, Ordering Provision Nos. 2.a.i and 2.a.ii.

The hearing will allow Dipesh Limbad dba Last Chance, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Dipesh Limbad dba Last Chance, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Dipesh Limbad dba Last Chance to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Dipesh Limbad dba Last Chance, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and Texas Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Cynthia Sirois, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by con-

tacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 30, 2022

TRD-202202519
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 6, 2022



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Karishma Properties, Inc. dba Quick N Easy Stop: SOAH Docket No. 582-22-03363; TCEQ Docket No. 2020-1024-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 28, 2022

**William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 9, 2021, concerning assessing administrative penalties against and requiring certain actions of Karishma Properties, Inc. dba Quick N Easy Stop, for violations in Bexar County, Texas, of: 30 Texas Administrative Code §334.50(b)(1)(A) and Texas Water Code §26.3475(c)(1).

The hearing will allow Karishma Properties, Inc. dba Quick N Easy Stop, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Karishma Properties, Inc. dba Quick N Easy Stop, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this

preliminary hearing. **Upon failure of Karishma Properties, Inc. dba Quick N Easy Stop to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Karishma Properties, Inc. dba Quick N Easy Stop, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and Texas Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Cynthia Sirois, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 30, 2022

TRD-202202521

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 6, 2022



Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 113

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Subchapter C, National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63), under the requirements of Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017, 382.022,

and 382.051; Texas Water Code, §§5.103, 5.105, and 7.002; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would incorporate by reference revisions adopted by the United States Environmental Protection Agency (EPA) to Maximum Achievable Control Technology (MACT) and Generally Available Control Technology (GACT) standards.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on **Thursday, August 11, 2022, at 10:00 a.m.** in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by **Tuesday, August 9, 2022**. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on **Wednesday, August 10, 2022**, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZWJmMDM4ZTYtN2NkZS00YWQ5LTlkNDMtZjQyMDBiNGYwYWMy%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAY-TX (TDD). Requests should be made as far in advance as possible.

Written 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 2022-005-113-AI.** The comment period closes on August 15, 2022. Please choose one of the methods provided to submit your *written* comments.

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 Melanie Nelon, Air Permits Division, (512) 239-1350.

TRD-202202478

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 1, 2022

◆ ◆ ◆
 Notice of Public Meeting for an Air Quality Permit: Proposed Air Quality Permit Numbers 166032, PSDTX1598, and GHGPSDTX210

APPLICATION. Entergy Texas, Inc., 10055 Grogans Mill Road, The Woodlands, Texas 77380-1059, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of proposed State Air Quality Permit 166032, issuance of Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1598, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX210 for emissions of GHGs, which would authorize construction of the Orange County Advanced Power Station located at 1000 Power House Road, Orange, Orange County, Texas 77630. This application was

processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The proposed facility will emit the following air contaminants in a significant amount: carbon monoxide, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfuric acid mist, and greenhouse gases. In addition, the facility will emit the following air contaminants: nitrogen oxides, hazardous air pollutants, sulfur dioxide, aqueous ammonia, and hydrogen.

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

PM_{2.5}

| Maximum Averaging Time | Maximum Increment Consumed (µg/m ³) | Allowable Increment (µg/m ³) |
|------------------------|---|--|
| 24-hour | 8.7 | 9 |
| Annual | 2 | 4 |

This application was submitted to the TCEQ on July 29, 2021. The executive director has determined that the emissions of air contaminants from the proposed facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Beaumont regional office, and at the Bridge City Library, 101 Parkside Drive, Bridge City, Orange County, Texas beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas.

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 re-

quested 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:

Monday, August 1, 2022, at 7:00 p.m.

Lamar State College Orange, Student Center

407 Green Avenue

Orange, Texas 77630

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

Further information may also be obtained from Entergy Texas, Inc. at the address stated above or by calling Ms. Annisa White, Environmental Analyst, at (281) 297-3386.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: July 01, 2022

TRD-202202473

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2022

◆ ◆ ◆
Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015946001

APPLICATION. Serenity RV Resort LP, 1344 County Road 302, Port Lavaca, Texas 77979, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015946001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day.

The facility will be located at 1344 County Road 302, in the City of Port Lavaca, in Jackson County, Texas 77979. The treated effluent will be discharged to a man-made ditch, thence to Carancahua Bay in Segment No. 2456 of the Bays and Estuaries. The unclassified receiving water use is minimal aquatic life use for the man-made ditch. The designated uses for Segment No. 2456 are primary contact recreation exceptional aquatic life use, and oyster waters. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Carancahua Bay, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.429722%2C28.705277&level=12>

The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Texas General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the

mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, August 15, 2022 at 7:00 p.m.

Bauer Community Center

2300 TX-35

Port Lavaca, Texas 77979

INFORMATION. Members of the public are encouraged to submit written comments anytime during the 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 <http://www.tceq.texas.gov/goto/comment>. 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. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Jackson County Memorial Library, 411 North Wells Street, Room 121, Edna, Texas. Further information may also be obtained from Serenity RV Resort LP at the address stated above or by calling Mr. Ethan Rafei at (302) 897-2765.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: July 01, 2022

TRD-202202474

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2022

◆ ◆ ◆
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 June 20, 2022 to July 1, 2022. 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 8, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, August 7, 2022.

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Fish and Wildlife Service

Location: The project site is located in the Gulf Intracoastal Waterway (GIWW), along the banks of the Brazoria National Wildlife Refuge between West Bay and Bastrop Bayou, in Brazoria County, Texas.

Latitude & Longitude (NAD 83): 29.120380, -95.185636

Project Description: The applicant proposes to discharge 34,339 cubic yards of graded rock material into 8.92 acres of the GIWW during the construction of three breakwater segments totaling 3.6 miles. The breakwaters are intended to reduce wave energy and erosion along the GIWW and enhance and restore the shorelines and marsh habitat within the Brazoria National Wildlife Refuge. Breakwater 1 is approximately 1,480 linear feet and located on the north bank of the GIWW directly across from the mouth of Oyster Lake. Breakwater 2 is approximately 10,261 linear feet and located along the south bank of the GIWW between Bastrop Bayou and Oyster Lake. Breakwater 3 is approximately 7,302 linear feet and located along the south bank of the GIWW between Oyster Lake and West Bay. The breakwater design incorporates fish passages at established increments along the breakwater segments.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2021-00441. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 22-1341-F2

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-202202514

Mark Havens

Deputy Land commissioner and Chief Clerk

General Land Office

Filed: July 5, 2022



Texas Health and Human Services Commission

Public Notice: Inclusion of American Rescue Plan Act of 2021 into CHIP State Plan

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 22-0003 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act.

The purpose of this amendment is to update the CHIP State Plan to indicate compliance with the American Rescue Plan Act (ARPA) of 2021 provisions that require states to cover treatment (including treatment of a condition that may seriously complicate COVID-19 treatment), testing, and vaccinations for COVID-19 without cost-sharing in CHIP, effective March 11, 2021, through the last day of the first calendar quarter that begins one year after the last day of the COVID-19 emergency period.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-2264 or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be made available for review at HHSC local offices.

quiries@hhsc.state.tx.us. Copies of the proposed amendment will be made available for review at HHSC local offices.

TRD-202202533

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 6, 2022



Public Notice - Revised June 10, 2022 Public Notice for the Home and Community Based Services (CMS) Program

This revised Public Notice of Intent (PNI) replaces the PNI that was issued on June 10, 2022. The revisions are in bold type or otherwise noted.

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Home and Community based Services (HCS) Program. HHSC administers the HCS Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the HCS waiver application through August 31, 2023. **The new proposed effective date for this amendment is December 1, 2022.**

This amendment request proposes to make the following changes:

Appendix D

HHSC is expanding the minimum qualifications for the Local Intellectual and Developmental Disabilities (LIDDA) service coordinators to allow for a broader group of persons to be qualified as a service coordinator as described below:

Currently, the HCS waiver application requires a service coordinator to have:

- (1) a bachelor's or advanced degree from an accredited college in a social, behavioral or human service field; or
- (2) a high school diploma or an equivalent certificate and:
 - (A) two years of paid experience as a case manager in a state or federally funded Parent Case Management Program or have graduated from Partners in Policy Making; and
 - (B) personal experience as an immediate family member of an individual with an intellectual disability.

HHSC is requesting that the qualifications be changed to allow a service coordinator to have:

- (1) a bachelor's or advanced degree from an accredited college in any field;
- (2) an associate degree in a social, behavioral, human service, or health-related field including, but not limited to, psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human development, gerontology, educational psychology, education, and criminal justice; or
- (3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and two years of paid or unpaid experience with individuals with intellectual or developmental disabilities.

Added language to reflect current policy that the LIDDA, at its discretion, may require additional education and experience for service coordinators. *(This sentence was previously under the Appendix I heading below.)*

Appendix I

HHSC made changes to provisions related to Electronic Visit Verification (EVV) as follows:

Added language to clarify that EVV compliance reviews are being conducted.

Clarified language that EVV has been implemented.

Added language that Financial Management Services Agencies (FMSAs) must comply with EVV requirements and policies.

Included a statement that HHSC EVV Operations conducts EVV compliance reviews.

Added language that program providers and FMSAs who fail to comply with EVV requirements and policies may be subject to progressive enforcement action based on the number of occurrences of non-compliance within a 24-month period or a temporary hold of Medicaid claims payments.

Added language to reflect the rate methodology for the new service, individualized skills and socialization.

Miscellaneous

HHSC carried forward from the HCS August 31st, 2022 amendment the following changes related to the discontinuation of day habilitation and the implementation of individualized skills and socialization:

A transition plan to address the discontinuation of day habilitation during waiver year 5 and the implementation of individualized skills and socialization, a new service, to comply with the Home and Community-Based Services (HCBS) settings requirements.

The individualized skills and socialization service and the service provider qualifications for the service.

Removal of the following language from the service scope for day habilitation - "Day habilitation does not include services funded under section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.)."

HHSC changed the term "HHSC Rate Analysis" to "HHSC Provider Finance Department" and provided clarifying language for the individualized skills and socialization services projected costs.

The HCS waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes, in the home of a family member, or another community setting such as a three-person or four-person residence operated by an HCS program provider. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources. Services in the HCS waiver program include day habilitation, respite, supported employment, adaptive aids, audiology, occupational therapy, physical therapy, prescribed drugs, speech and language pathology, financial management services, support consultation, behavioral support, cognitive rehabilitation therapy, dental treatment, dietary services, employment assistance, minor home modifications, nursing, residential assistance, social work, supporting home living, and transition assistance services.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy of the proposed waiver amendment may also be obtained online on the HHSC website at:

<https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers>

Comments about the proposed waiver amendment must be submitted to HHSC by **August 15, 2022**.

The HHSC local offices of social services will post this notice for 30 days.

Addresses

U.S. Mail

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Basundhara Raychaudhuri, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202202505

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 5, 2022



Public Notice - Revised Public Notice for the Texas Home Living Program (TxHmL)

This revised Public Notice of Intent (PNI) replaces the PNI that was issued on June 10, 2022. The revisions are in bold type or otherwise noted.

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Texas Home Living Program. HHSC administers the TxHmL Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the TxHmL waiver application through February 28, 2027.

The new proposed effective date for this amendment is December 1, 2022.

This amendment request proposes to make the following changes:

Appendix C

HHSC clarified that supported employment is not available to individuals under a program funded under Section 110 of the Rehabilitation Act of 1973.

HHSC added individualized skills and socialization as well as the service provider qualifications for the service.

Appendix D

HHSC is expanding the minimum qualifications for the Local Intellectual and Developmental Disabilities (LIDDA) service coordinators to allow for a broader group of persons to be qualified as a service coordinator as described below:

Currently, the TxHmL waiver application requires a service coordinator to have:

- (1) a bachelor's or advanced degree from an accredited college in a social, behavioral or human service field; or
- (2) a high school diploma or an equivalent certificate and:
 - (A) two years of paid experience as a case manager in a state or federally funded Parent Case Management Program or have graduated from Partners in Policy Making; and
 - (B) personal experience as an immediate family member of an individual with an intellectual disability.

HHSC is requesting that the qualifications be changed to allow a service coordinator to have:

- (1) a bachelor's or advanced degree from an accredited college in any field;
- (2) an associate degree in a social, behavioral, human service, or health-related field including, but not limited to, psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human development, gerontology, educational psychology, education, and criminal justice; or
- (3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and two years of paid or unpaid experience with individuals with intellectual or developmental disabilities.

Added language to reflect current policy that the LIDDA, at its discretion, may require additional education and experience for service coordinators.

(This sentence was previously under the Appendix I heading below.)

Appendix I

HHSC made changes to provisions related to Electronic Visit Verification (EVV) as follows:

Added language to clarify that EVV compliance reviews are being conducted.

Added language that Financial Management Services Agencies (FMSAs) must comply with EVV requirements and policies.

Included a statement that HHSC EVV Operations conducts EVV compliance reviews.

Added language that program providers and FMSAs who fail to comply with EVV requirements and policies may be subject to progressive enforcement action based on the number of occurrences of non-compliance within a 24-month period or a temporary hold of Medicaid claims payments.

Added language to reflect the rate methodology for the new service, individualized skills and socialization.

Main Appendix / Miscellaneous

HHSC added individualized skills and socialization as a new service to be provided in the TxHmL Program, as well as the service provider qualifications and an explanation that an individual may receive the new service through the consumer-directed services option. HHSC also added individualized skills and socialization to the participant-directed services and waiver service coverage charts and added projections for the new service under Appendix E and appendix J for waiver years 1 through 5. HHSC also updated the day habilitation projections for waiver years 1 through 5.

Added a transition plan to address the discontinuation of day habilitation during waiver year 2 and the implementation of individualized skills and socialization to comply with the Home and Community-Based Services (HCBS) settings requirements.

The TxHmL waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes or in the home of another person, such as a family member. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources. Services in the TxHmL waiver program are day habilitation, respite, supported employment, prescription medications, financial management services, support consultation, adaptive aids, minor home modifications, audiology services, behavioral support, community support, dental treatment, dietary services, employment assistance, occupational therapy services, physical therapy services, nursing, speech-language pathology services, and individualized skills and socialization.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy of the proposed waiver amendment may also be obtained online on the HHSC website at:

<https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers>

Comments about the proposed waiver amendment must be submitted to HHSC by **August 15, 2022**.

The HHSC local offices will post this notice for 30 days.

Addresses

U.S. Mail

Texas Health and Human Services Commission
Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules and Committees
701 West 51st Street, Mail Code H-310
Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Basundhara Raychaudhuri, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202202506

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 5, 2022

Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of May 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|--|----------------|-------------------------|------------------|----------------|
| NEW BRAUNFELS | CEMEX CONSTRUCTION MATERIALS SOUTH LLC | L07156 | NEW BRAUNFELS | 00 | 05/25/22 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|---|----------------|-------------------------|------------------|----------------|
| AUSTIN | WORLDWIDE CLINICAL TRIALS EARLY PHASE SERVICES/BIOANALYTICAL SCIENCES LLC | L04427 | AUSTIN | 25 | 05/24/22 |
| AUSTIN | PPD DEVELOPMENT LP | L04348 | AUSTIN | 25 | 05/27/22 |
| AUSTIN | CENTRAL TEXAS MEDICAL SPECIALISTS PLLC DBA AUSTIN CANCER CENTERS | L06618 | AUSTIN | 26 | 05/16/22 |
| AUSTIN | ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER | L00740 | AUSTIN | 179 | 05/16/22 |
| CONVERSE | CLEARWELL WIRELINE SERVICES LLC | L06220 | CONVERSE | 46 | 05/17/22 |
| DALLAS | TEXAS INSTRUMENTS INC | L05048 | DALLAS | 20 | 05/31/22 |

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

| | | | | | |
|-----------|---|--------|-----------|-----|----------|
| DEER PARK | HEXION COATINGS AND COMPOSITES (US) INC | L05323 | DEER PARK | 12 | 05/20/22 |
| DENTON | HEALTH TEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE DENTON HEART GROUP | L06777 | DENTON | 03 | 05/31/22 |
| EL PASO | TENET HOSPITALS LIMITED | L06152 | EL PASO | 38 | 05/18/22 |
| FREEPORT | SOLVAY USA INC | L02807 | FREEPORT | 48 | 05/26/22 |
| HOUSTON | ALLIANCE GEOTECHNICAL GROUP INC | L05314 | DALLAS | 49 | 05/20/22 |
| HOUSTON | PARADIGM CONSULTANTS INC DBA CMT TECHNICAL SERVICES (TEXAS) | L04875 | HOUSTON | 16 | 05/23/22 |
| HOUSTON | THE METHODIST HOSPITAL RESEARCH INSTITUTE DBA HOUSTON METHODIST RESEARCH INSTITUTE | L06383 | HOUSTON | 18 | 05/24/22 |
| HOUSTON | NEXTIER COMPLETION SOLUTIONS INC | L06712 | HOUSTON | 20 | 05/23/22 |
| HOUSTON | UT PHYSICIANS | L05465 | HOUSTON | 26 | 05/18/22 |
| HOUSTON | HOUSTON REFINING LP | L00187 | HOUSTON | 83 | 05/25/22 |
| HOUSTON | MEMORIAL HERMANN HEALTH SYSTEM | L01168 | HOUSTON | 193 | 05/16/22 |
| LONGVIEW | INTERTEK ASSET INTEGRITY MANAGEMENT INC | L06801 | LONGVIEW | 20 | 05/24/22 |

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

| | | | | | |
|---------------|--|--------|---------------|-----|----------|
| MONT BELVIEU | SONIC SURVEYS LTD | L02622 | MONT BELVIEU | 35 | 05/25/22 |
| ODESSA | GCC PERMIAN LLC | L06964 | ODESSA | 02 | 05/25/22 |
| ROSHARON | EMPIRE WIRELINE LLC | L06997 | MANVEL | 02 | 05/17/22 |
| TEXAS CITY | VALERO REFINING - TEXAS LP | L02578 | TEXAS CITY | 44 | 05/20/22 |
| THE WOODLANDS | METHODIST HEALTH CENTER DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL | L06861 | THE WOODLANDS | 12 | 05/16/22 |
| THROUGHOUT TX | RODRIGUEZ ENGINEERING LABORATORIES | L04700 | AUSTIN | 29 | 05/24/22 |
| THROUGHOUT TX | UNIVERSAL PRESSURE PUMPING INC | L06871 | CLEBURNE | 08 | 05/31/22 |
| THROUGHOUT TX | METALOGIC INSPECTION SERVICES (SOUTHWEST) LLC | L06772 | HOUSTON | 14 | 05/31/22 |
| THROUGHOUT TX | AMERICAN PIPING INSPECTION INC | L06835 | LONGVIEW | 13 | 05/31/22 |
| WEBSTER | CHCA CLEAR LAKE LP DBA HCA HOUSTON HEALTHCARE CLEAR LAKE | L01680 | WEBSTER | 112 | 05/23/22 |

RENEWAL OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|-------------------------|----------------|-------------------------|------------------|----------------|
| DEER PARK | OXY VINYLs LP | L03200 | DEER PARK | 22 | 05/26/22 |
| FLOWER MOUND | TEXAS ONCOLOGY PA | L05502 | FLOWER MOUND | 26 | 05/24/22 |

RENEWAL OF LICENSES ISSUED: (Continued)

| | | | | | |
|----------------|-----------------------------|--------|----------------|----|----------|
| LUBBOCK | AYMAN KARKOUTLY MD PA | L05506 | LUBBOCK | 05 | 05/31/22 |
| SAN ANTONIO | WELLMED NETWORKS INC | L06448 | SAN ANTONIO | 08 | 05/17/22 |
| SAN ANTONIO | IIA NUCLEAR SERVICES INC | L05278 | SAN ANTONIO | 22 | 05/31/22 |

TERMINATIONS OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|----------------------------|----------------|-------------------------|------------------|----------------|
| CLUTE | INTEGRITY TESTLABS LLC | L06756 | CLUTE | 08 | 05/26/22 |
| FORT WORTH | HUNTER WELL SCIENCE INC | L06413 | FORT WORTH | 09 | 05/31/22 |
| HOUSTON | ONE STEP DIAGNOSTIC INC | L05990 | HOUSTON | 19 | 05/20/22 |

TRD-202202532
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: July 6, 2022



Texas Lottery Commission

Scratch Ticket Game Number 2415 "COWBOYS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2415 is "COWBOYS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2415 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2415.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, FOOTBALL SYMBOL, TD SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2415 - 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 |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| 41 | FRON |
| 42 | FRTO |
| 43 | FRTH |
| 44 | FRFR |
| 45 | FRFV |
| 46 | FRSX |
| 47 | FRSV |
| 48 | FRET |
| 49 | FRNI |
| 50 | FFTY |
| FOOTBALL SYMBOL | WIN\$ |
| TD SYMBOL | WINALL |
| \$5.00 | FIV\$ |
| \$10.00 | TEN\$ |
| \$15.00 | FFN\$ |
| \$20.00 | TWY\$ |

| | |
|-----------|--------|
| \$50.00 | FFTY\$ |
| \$100 | ONHN |
| \$500 | FVHN |
| \$5,000 | FVTH |
| \$100,000 | 100TH |

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2415), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2415-0000001-001.

H. Pack - A Pack of "COWBOYS" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "COWBOYS" Scratch Ticket Game No. 2415.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "COWBOYS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "FOOTBALL" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a Touchdown "TD" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers

must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes \$5,000 and \$100,000 will each appear at least once, except on Tickets winning more than fifteen (15) times, with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Spots as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. The "TD" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "TD" (WINALL) Play Symbol will instantly win all twenty (20) prize amounts and will win only as per the prize structure.

K. The "TD" (WINALL) Play Symbol will never appear more than once on a Ticket.

L. The "TD" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.

M. On Tickets winning with the "TD" (WINALL) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

N. The "FOOTBALL" (WINS) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "FOOTBALL" (WINS) Play Symbol will win the prize for that Play Symbol.

P. The "FOOTBALL" (WINS) Play Symbol will never appear more than once on a Ticket.

Q. The "FOOTBALL" (WINS) Play Symbol will never appear on a Non-Winning Ticket.

R. The "TD" (WINALL) Play Symbol and the "FOOTBALL" (WINS) Play Symbol will never appear on the same Ticket.

S. On Tickets winning with the "FOOTBALL" (WINS) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

T. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and \$5, 10 and \$10, 15 and \$15, 20 and \$20 and 50 and \$50).

U. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

V. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "COWBOYS" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COWBOYS" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COWBOYS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "COWBOYS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "COWBOYS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "COWBOYS" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 9,720,000 Scratch Tickets in the Scratch Ticket Game No. 2415. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2415 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5.00 | 1,209,600 | 8.04 |
| \$10.00 | 496,800 | 19.57 |
| \$15.00 | 388,800 | 25.00 |
| \$20.00 | 388,800 | 25.00 |
| \$50.00 | 75,600 | 128.57 |
| \$100 | 7,560 | 1,285.71 |
| \$500 | 378 | 25,714.29 |
| \$5,000 | 27 | 360,000.00 |
| \$100,000 | 4 | 2,430,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2415 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2415, 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-202202522
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 6, 2022



Scratch Ticket Game Number 2416 "HOUSTON TEXANS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2416 is "HOUSTON TEXANS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2416 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2416.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, FOOTBALL SYMBOL, GOALPOST SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2416 - 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 |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| FOOTBALL SYMBOL | WIN\$ |
| GOALPOST SYMBOL | WINX5 |
| \$5.00 | FIV\$ |
| \$10.00 | TEN\$ |
| \$20.00 | TWY\$ |
| \$50.00 | FFTY\$ |
| \$100 | ONHN |
| \$500 | FVHN |
| \$5,000 | FVTH |
| \$100,000 | 100TH |

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2416), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2416-0000001-001.

H. Pack - A Pack of the "HOUSTON TEXANS" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HOUSTON TEXANS" Scratch Ticket Game No. 2416.

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 "HOUSTON TEXANS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "FOOTBALL" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "GOALPOST" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "FOOTBALL" (WIN\$) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

I. KEY NUMBER MATCH: The "GOALPOST" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. KEY NUMBER MATCH: The "FOOTBALL" (WINS) and "GOALPOST" (WINX5) Play Symbols can appear together on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOUSTON TEXANS" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOUSTON TEXANS" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOUSTON TEXANS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "HOUSTON TEXANS" 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 "HOUSTON TEXANS" 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "HOUSTON TEXANS" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,520,000 Scratch Tickets in Scratch Ticket Game No. 2416. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2416 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5.00 | 588,800 | 9.38 |
| \$10.00 | 662,400 | 8.33 |
| \$20.00 | 147,200 | 37.50 |
| \$50.00 | 34,500 | 160.00 |
| \$100 | 21,114 | 261.44 |
| \$500 | 1,242 | 4,444.44 |
| \$5,000 | 10 | 552,000.00 |
| \$100,000 | 4 | 1,380,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2416 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. 2416, 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-202202523
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 6, 2022



Scratch Ticket Game Number 2431 "SPECIAL EDITION LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2431 is "SPECIAL EDITION LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2431 shall be \$3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2431.

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: THE MOCKINGBIRD SYMBOL, THE CACTUS SYMBOL, THE STRAWBERRY SYMBOL, THE ROADRUNNER SYMBOL, THE BAT SYMBOL, THE PIÑATA SYMBOL, THE COWBOY SYM-

BOL, THE NEWSPAPER SYMBOL, THE SUNSET SYMBOL, THE COWBOY HAT SYMBOL, THE COVERED WAGON SYMBOL, THE MARACAS SYMBOL, THE LONE STAR SYMBOL, THE CORN SYMBOL, THE HEN SYMBOL, THE SPEAR SYMBOL, THE GUITAR SYMBOL, THE FIRE SYMBOL, THE MORTAR PESTLE SYMBOL, THE WHEEL SYMBOL, THE PECAN TREE SYMBOL, THE JACKRABBIT SYMBOL, THE BOAR SYMBOL, THE ARMADILLO SYMBOL, THE LIZARD SYMBOL, THE CHILE PEPPER SYMBOL, THE HORSESHOE SYMBOL, THE HORSE SYMBOL, THE SHOES SYMBOL, THE BLUEBONNET SYMBOL, THE CHERRIES SYMBOL, THE OIL RIG SYMBOL,

THE MOONRISE SYMBOL, THE RATTLESNAKE SYMBOL, THE WINDMILL SYMBOL, THE SPUR SYMBOL and THE SADDLE SYMBOL.

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. 2431 - 1.2D

| PLAY SYMBOL | CAPTION |
|--------------------------|-----------------|
| THE MOCKINGBIRD SYMBOL | THEMOCKINGBIRD |
| THE CACTUS SYMBOL | THE CACTUS |
| THE STRAWBERRY SYMBOL | THESTRAWBERRY |
| THE ROADRUNNER SYMBOL | THEROADRUNNER |
| THE BAT SYMBOL | THE BAT |
| THE PIÑATA SYMBOL | THE PIÑATA |
| THE COWBOY SYMBOL | THECOWBOY |
| THE NEWSPAPER SYMBOL | THENEWSPAPER |
| THE SUNSET SYMBOL | THE SUNSET |
| THE COWBOY HAT SYMBOL | THECOWBOYHAT |
| THE COVERED WAGON SYMBOL | THECOVEREDWAGON |
| THE MARACAS SYMBOL | THEMARACAS |
| THE LONE STAR SYMBOL | THELONESTAR |
| THE CORN SYMBOL | THE CORN |
| THE HEN SYMBOL | THE HEN |
| THE SPEAR SYMBOL | THE SPEAR |
| THE GUITAR SYMBOL | THE GUITAR |
| THE FIRE SYMBOL | THE FIRE |
| THE MORTAR PESTLE SYMBOL | THEMORTARPESTLE |
| THE WHEEL SYMBOL | THE WHEEL |
| THE PECAN TREE SYMBOL | THEPECANTREE |
| THE JACKRABBIT SYMBOL | THEJACKRABBIT |
| THE BOAR SYMBOL | THE BOAR |
| THE ARMADILLO SYMBOL | THEARMADILLO |
| THE LIZARD SYMBOL | THELIZARD |
| THE CHILE PEPPER SYMBOL | THECHILEPEPPER |
| THE HORSESHOE SYMBOL | THEHORSESHOE |

| | |
|------------------------|----------------|
| THE HORSE SYMBOL | THE HORSE |
| THE SHOES SYMBOL | THE SHOES |
| THE BLUEBONNET SYMBOL | THEBLUEBONNET |
| THE CHERRIES SYMBOL | THECHERRIES |
| THE OIL RIG SYMBOL | THEOILRIG |
| THE MOONRISE SYMBOL | THEMOONRISE |
| THE RATTLESNAKE SYMBOL | THERATTLESNAKE |
| THE WINDMILL SYMBOL | THEWINDMILL |
| THE SPUR SYMBOL | THE SPUR |
| THE SADDLE SYMBOL | THESADDLE |

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 (2431), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2431-0000001-001.

H. Pack - A Pack of the "SPECIAL EDITION LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SPECIAL EDITION LOTERIA" Scratch Ticket Game No. 2431.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly thirty (30) Play Symbols. A prize winner in the "SPECIAL EDITION LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: 1) The player completely scratches the CALLER'S CARD to reveal 14 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly

match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 14 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. 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 thirty (30) 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 thirty (30) 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 thirty (30) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the thirty (30) 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 three (3) 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 Play Symbols.

C. There will be no matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. At least eight (8), but no more than twelve (12), CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a symbol on the PLAYBOARD/TABLA DE JUEGO play area on a Ticket.

E. No matching Play Symbols are allowed on the PLAYBOARD/TABLA DE JUEGO play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "SPECIAL EDITION LOTERIA" Scratch Ticket Game prize of \$3.00, \$5.00, \$8.00, \$10.00, \$15.00, \$18.00, \$20.00, \$30.00, \$33.00, \$50.00, \$80.00 or \$250, 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, \$33.00, \$50.00, \$80.00 or \$250 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 "SPECIAL EDITION LOTERIA" Scratch Ticket Game prize of \$3,000 or \$50,000, 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 "SPECIAL EDITION LOTERIA" 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 "SPECIAL EDITION LOTERIA" 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 "SPECIAL EDITION LOTERIA" 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 32,400,000 Scratch Tickets in Scratch Ticket Game No. 2431. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2431 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$3.00 | 3,024,000 | 10.71 |
| \$5.00 | 1,296,000 | 25.00 |
| \$8.00 | 864,000 | 37.50 |
| \$10.00 | 648,000 | 50.00 |
| \$15.00 | 648,000 | 50.00 |
| \$18.00 | 324,000 | 100.00 |
| \$20.00 | 216,000 | 150.00 |
| \$30.00 | 216,000 | 150.00 |
| \$33.00 | 103,680 | 312.50 |
| \$50.00 | 32,400 | 1,000.00 |
| \$80.00 | 15,120 | 2,142.86 |
| \$250 | 4,860 | 6,666.67 |
| \$3,000 | 230 | 140,869.57 |
| \$50,000 | 14 | 2,314,285.71 |

*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 4.38. 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. 2431 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. 2431, 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-202202503
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 5, 2022



Scratch Ticket Game Number 2443 "10X LUCKY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2443 is "10X LUCKY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2443 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2443.

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, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 5X SYMBOL, 10X SYMBOL, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$30.00, \$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. 2443 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| 01 | ONE |
| 02 | TWO |
| 03 | THR |
| 04 | FOR |
| 06 | SIX |
| 07 | SVN |
| 08 | EGT |
| 09 | NIN |
| 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 |
| 5X SYMBOL | WINX5 |
| 10X SYMBOL | WINX10 |
| \$2.00 | TWO\$ |
| \$3.00 | THR\$ |

| | |
|----------|--------|
| \$5.00 | FIV\$ |
| \$10.00 | TEN\$ |
| \$20.00 | TWY\$ |
| \$30.00 | TRTY\$ |
| \$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 (2443), 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: 2443-0000001-001.

H. Pack - A Pack of the "10X LUCKY" 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 "10X LUCKY" Scratch Ticket Game No. 2443.

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 "10X LUCKY" 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 WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 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 and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use both WINNING NUMBERS Play Symbols to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$2 and 02, \$3 and 03 and \$20 and 20).

J. 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.

K. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

M. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

N. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

O. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

Q. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

R. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

S. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. The "5X" (WINX5) and "10X" (WINX10) Play Symbols can appear together on the same Ticket as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "10X LUCKY" Scratch Ticket Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$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 \$30.00, \$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 "10X LUCKY" 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 "10X LUCKY" 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 "10X LUCKY" 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 "10X LUCKY" 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 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2443. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2443 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$2.00 | 1,008,000 | 10.00 |
| \$3.00 | 510,720 | 19.74 |
| \$5.00 | 349,440 | 28.85 |
| \$10.00 | 174,720 | 57.69 |
| \$15.00 | 80,640 | 125.00 |
| \$20.00 | 161,280 | 62.50 |
| \$30.00 | 12,852 | 784.31 |
| \$50.00 | 12,810 | 786.89 |
| \$100 | 4,200 | 2,400.00 |
| \$1,000 | 16 | 630,000.00 |
| \$30,000 | 6 | 1,680,000.00 |

*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 4.35. 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. 2443 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. 2443, 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-202202504
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 5, 2022

◆ ◆ ◆

Public Utility Commission of Texas

Notice of Proceeding for 2022 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2022 compliance proceeding initiated by the Public Utility Commission of Texas (commission) for eligible telecommunications providers (ETP) and resale eligible telecommunications providers (RETP) to attest to the proper use of Texas universal service funds (TUSF).

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to PURA § 56.030. Project Number 32567.

The commission initiated this proceeding under Public Utility Regulatory Act (PURA) § 56.030 and 16 Texas Administrative Code (TAC) §§ 26.417 and 26.419. PURA § 56.030 requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with the requirements for receiving money from the TUSF and requirements regarding

the use of money from the universal service fund program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP and RETP receiving support from the TUSF. In accordance with PURA § 56.030 and 16 TAC §26.417 and §26.419, each ETP and RETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds. All carriers in Texas requesting certification by the commission shall submit an affidavit by September 1, 2022.

Carriers designated as ETPs and RETPs may contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 32567.

TRD-202202502
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 2022



Notice of Proceeding for 2022 Annual State Certification
for Designation of Common Carriers as Eligible
Telecommunications Carriers to Receive Federal Universal
Service Funds

Notice is given to the public of the 2022 certification proceeding initiated by the Public Utility Commission of Texas (commission) for state certification of common carriers as eligible telecommunications carriers to receive federal universal service funds.

Project Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. Project Number 24481.

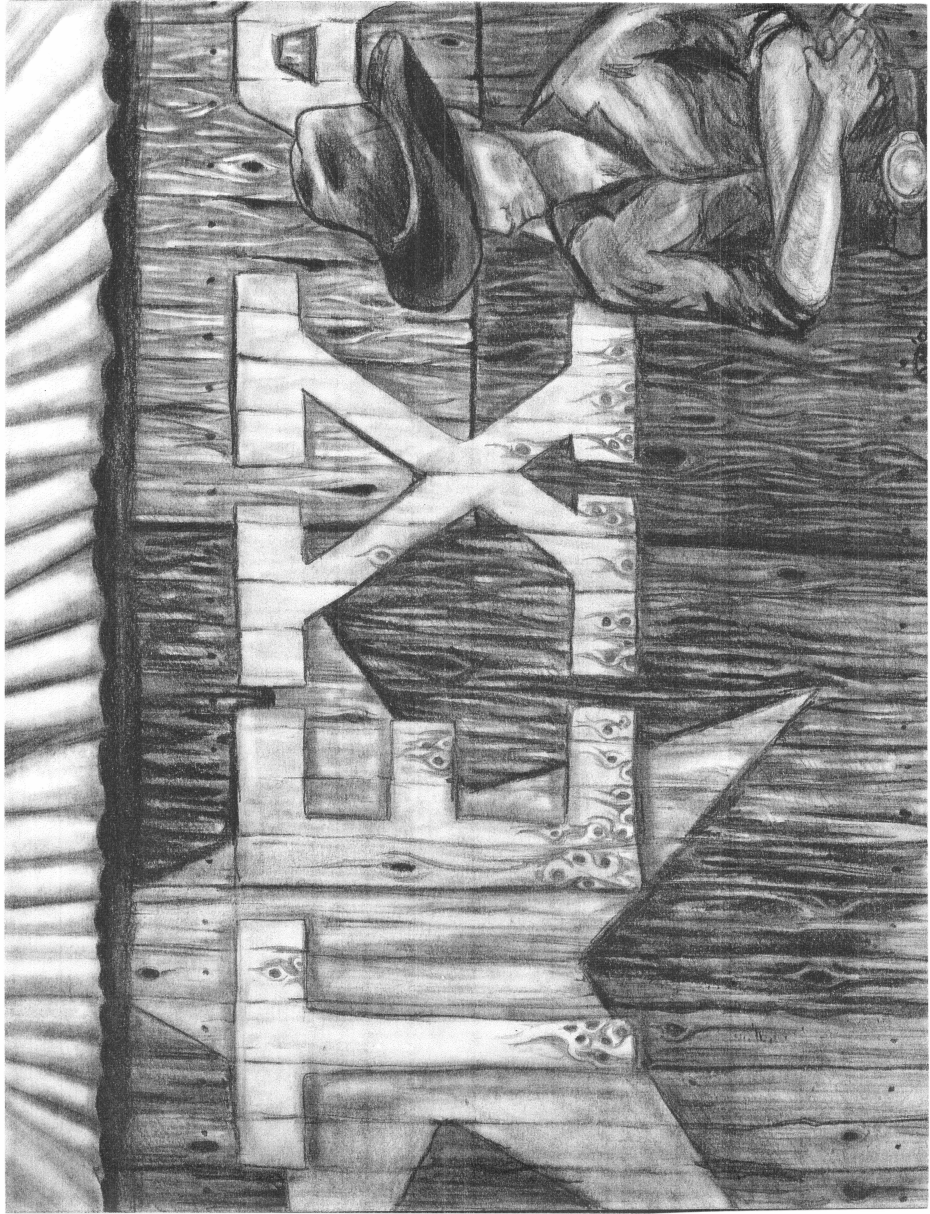
Under 47 Code of Federal Regulations §54.314, the commission annually certifies that all federal high-cost support provided to carriers in Texas was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The commission must file the certification with the Federal Communications Commission and the Universal Service Administrative Company by October 1 each year in order for ETCs to receive federal high-cost support. Without certification, carriers will not receive federal high-cost support.

The certification requirement applies to all incumbent local exchange carriers and competitive eligible telecommunications carriers seeking federal high-cost support. Under 16 Texas Administrative Code §26.418(k), each carrier shall provide the commission with a sworn affidavit certifying that the carrier complies with federal requirements for receiving federal high-cost support. All carriers in Texas requesting certification by the commission must submit an affidavit by September 1, 2022.

Carriers seeking to be certified may contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 24481.

TRD-202202501
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 2022





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 47 (2022) is cited as follows: 47 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 “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 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)

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is \$502 annually for first-class mail delivery and \$340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printedsc



LexisNexis