TEXAS REGISTER

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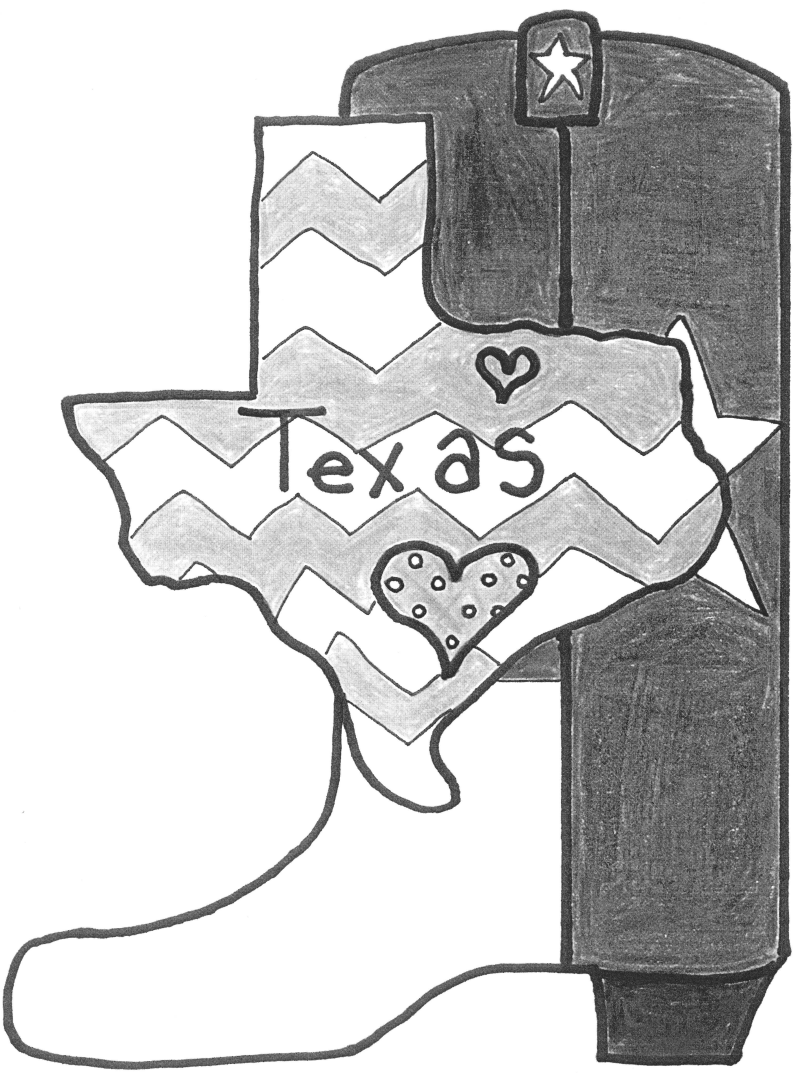
In This Issue


Texas

THE GOVERNOR

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

Appointments

Appointments for December 14, 2022

Appointed as District Attorney of the 34th Judicial District, Culberson, Hudspeth, and El Paso Counties, effective at 5:00 p.m. MST on December 14, 2022, for a term until December 31, 2024, or until his successor shall be duly elected and qualified, Billy D. "Bill" Hicks, Jr. of El Paso, Texas (replacing Yvonne Rosales of San Antonio, who resigned).

Appointments for December 15, 2022

Appointed to the School Land Board for a term to expire August 29, 2023, James B. "Brad" Curlee of Round Rock, Texas (replacing Todd A. Williams of Dallas, whose term expired).

Appointed to the School Land Board for a term to expire August 29, 2023, Michael A. Neill of Athens, Texas (Mr. Neill is being reappointed).

Appointments for December 16, 2022

Appointed to the Governor's Broadband Development Council for a term to expire August 31, 2026, Matthew J. "Matt" Yeager of Wylie, Texas (replacing Jerome A. "Jack" Kelanic of Dallas, who resigned).

Appointments for December 19, 2022

Pursuant to HB 3774, 87th Legislature, Regular Session, appointed as Judge of the 474th Judicial District Court, McLennan County, for a term until December 31, 2024, or until his successor shall be duly elected and qualified, Edward A. "Alan" Bennett of Waco, Texas.

Appointed to the Texas State Council for Interstate Adult Offender Supervision for a term to expire February 1, 2025, Randall S. "Scott" MacNaughton, II of San Antonio, Texas (replacing Trent Peroyea of Austin, who resigned).

Appointments for December 20, 2022

Appointed as Justice of the Fifth Court of Appeals, Place 13, for a term until December 31, 2024, or until her successor shall be duly elected and qualified, Emily A. Miskel of McKinney, Texas (replacing Justice Leslie Lester Osborne of Dallas, who resigned).

Appointed to the State Board for Educator Certification for a term to expire February 1, 2027, Michael D. McFarland, Ed.D. of Crowley, Texas (replacing Andrew B. Kim of New Braunfels who no longer qualifies).

Greg Abbott, Governor

TRD-202205141

♦ ♦ ♦

Proclamation 41-3945

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of December, 2022.

Greg Abbott, Governor

TRD-202205104

♦ ♦ ♦

Proclamation 41-3946

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of Texas, do hereby certify that the shooting that occurred on May 24, 2022, at Robb Elementary School in the City of Uvalde has caused widespread and severe damage, injury, and loss of life in Uvalde County, Texas; and

WHEREAS, those same conditions continue to exist in Uvalde County;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for Uvalde County.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of December, 2022.

Greg Abbott, Governor

TRD-202205105

♦ ♦ ♦

Proclamation 41-3947

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, pursuant to the Texas Disaster Act of 1975, I have issued a series of executive orders and suspensions of Texas laws aimed at protecting the health and safety of Texans, ensuring uniformity throughout the State, and achieving the least restrictive means of combatting the evolving threat posed by COVID-19; and

WHEREAS, Executive Orders GA-13, GA-37, GA-38, GA-39, and GA-40 remain in effect with "the force and effect of law" under Section 418.012 of the Texas Government Code; and

WHEREAS, ending the disaster declaration would terminate the executive orders that protect Texans' freedom by suspending the power of local governments to require masks, compel vaccinations, and close businesses; and

WHEREAS, I intend to keep these executive orders and suspensions in place until the Legislature can enact laws this session to prohibit local governments from imposing restrictions like mask mandates and vaccine mandates; and

WHEREAS, renewing the disaster declaration in no way infringes on the rights or liberties of any law-abiding Texans; and

WHEREAS, under the Texas Disaster Act of 1975, a state of disaster continues to exist in all counties during Texas's successful economic recovery from COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

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

Under the terms of Executive Orders GA-38, GA-39, and GA-40, all of which remain in effect by virtue of this renewal, local governments are divested of any lawful authority to subject Texans to mask mandates, vaccine mandates, or business-closure mandates. As a matter of state law, COVID-19 cannot justify those local intrusions upon personal liberty.

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of December, 2022.

Greg Abbott, Governor

TRD-202205106

♦ ♦ ♦

Proclamation 41-3948

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

WHEREAS, a disaster has been declared at the local level by the City of El Paso.

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

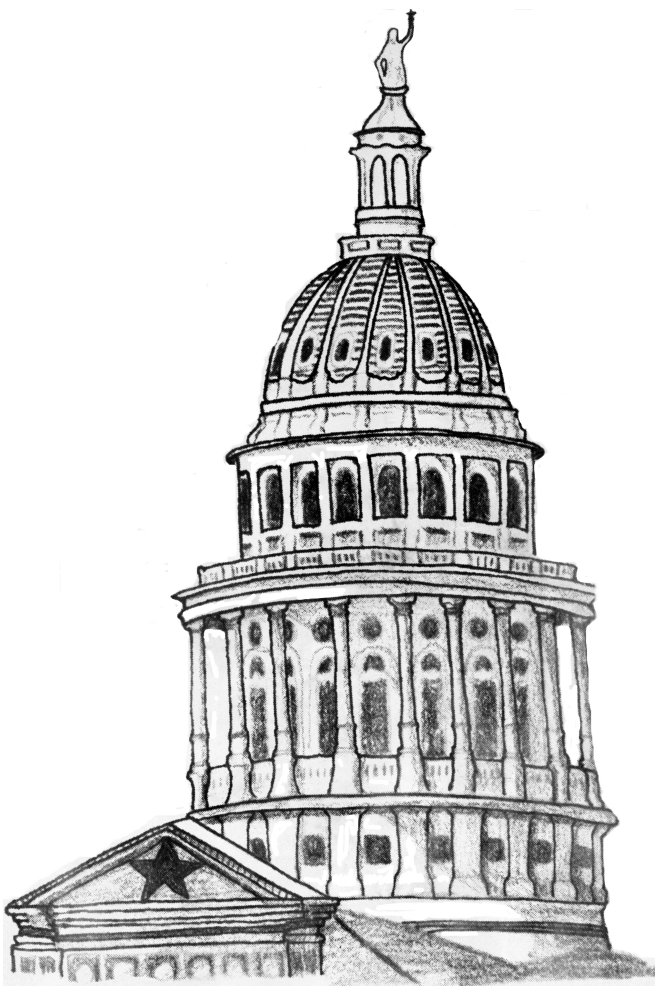
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of December, 2022.

Greg Abbott, Governor

TRD-202205153

♦ ♦ ♦



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-0490-KP

Requestor:

The Honorable Luis V. Saenz

Cameron County District Attorney

964 East Harrison Street, Fourth Floor

Brownsville, Texas 78520

Re: Authority of a county commissioners court to contract for the collection of forfeited commercial bail bonds under Code of Criminal Procedure article 103.0031(h) (RQ-0490-KP)

Briefs requested by January 16, 2023

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

TRD-202205053
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: December 15, 2022

♦ ♦ ♦

Opinions

Opinion No. KP-0422

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Procedure for numbering election ballots and which officials are authorized to select the method for numbering ballots (RQ-0405-KP)

S U M M A R Y

Section 52.062 of the Election Code provides that "[t]he ballots prepared by each authority responsible for having the official ballot prepared shall be numbered consecutively beginning with the number '1.'" A court could find that the machine-generation method of numbering ballots complies with section 52.062.

The Hood County elections administrator selects the ballot-numbering method for certain elections while the commissioners court selects the voting system.

We cannot answer as a matter of law whether a jurisdiction using a voting system for an election may number split ballot batches in certain instances as proposed by the Secretary of State in Advisory 2019-23 because it is a fact question beyond the scope of an Attorney General opinion. But pursuant to section 52.075 of the Election Code, there must be a connection between any ballot form or content modification such as the one set forth in the Advisory, and the formatting requirements of the voting system.

Opinion No. KP-0423

The Honorable Briscoe Cain

Chair, House Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authorized services a notary public may provide and fees a notary public may charge under state law (RQ-0459-KP)

S U M M A R Y

Chapter 406 of the Government Code provides for notaries public, including online notaries. A court would likely conclude that the law does not prohibit a notary public performing an online notarization from including additional information such as a barcode within the electronic notarial certificate or elsewhere on the document, provided doing so does not interfere with the notary's obligations under subsections 406.108(b)(1) and 406.109(d) of the Government Code, or the Texas Secretary of State's rules.

To the extent an online notary public charges a $5 fee for identification verification and document storage associated with performing an online notarization and is not otherwise charging online notarization fees that would cause the $25 maximum fee for online notarization to be exceeded, a court would likely conclude that the notary public may charge $5 for identification verification and document storage pursuant to section 406.111. At the same time, a court is unlikely to conclude that a catch-all fee in subsection 406.024(a)(11) for "notarial acts not provided for" was intended to encompass components of the online notarization process such as identity verification and document storage.

While chapter 406 and the Secretary's rules do not expressly provide for emailing a record of an online notarization, a court would likely

conclude that any release of an audio visual recording containing the presentation of an identification card or credential would require the removal of biometric information as well as the entire image of the identification card or credential, not just the numbers on the card or credential. Otherwise, a notary public must obtain the consent of the person whose identity is being established before releasing a record of an online notarization containing those items, whether by secure email or otherwise.

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

TRD-202205065
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: December 16, 2022

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO 580: Whether a corporation subject to section 253.094 of the Texas Election Code may provide pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission. (AOR-660)

Summary

No. Section 253.094 of the Texas Election Code prohibits corporations from making political contributions to candidates and political committees. Legal services provided without charge to candidates or political committees are in-kind contributions. When those services are given with the intent that they be used in connection with a campaign, they are in-kind campaign contributions. The described legal services would be used in connection with a campaign because the requestor's standing to pursue such a challenge would depend on its client's status as a candidate or political committee subject to the laws administered and enforced by the Commission.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 14, 2022.

TRD-202205056
Jim Tinley
General Counsel
Texas Ethics Commission
Filed: December 15, 2022

♦ ♦ ♦

EAO 581: Whether a political committee may accept political contributions through a web portal shared with an incorporated association that established and administers the political committee. (AOR-671)

Summary

Yes. A political committee may accept political contributions that have been processed by a web portal shared with an incorporated association, provided the general-purpose committee complies with applicable recordkeeping and reporting provisions

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 14, 2022.

TRD-202205057
Jim Tinley
General Counsel
Texas Ethics Commission
Filed: December 15, 2022

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EAO-582: Whether a written communication, created by a political subdivision and related to a measure, constitutes political advertising for purposes of the Election Code's prohibition against using public funds for political advertising. (AOR-672)

Summary

No. Assuming the factual statements in the communication are true, the communication provided by the requestor is entirely informational and does not include any advocacy.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 14, 2022.

TRD-202205058
Jim Tinley
General Counsel
Texas Ethics Commission
Filed: December 15, 2022

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EAO-583: Whether, under the Judicial Campaign Fairness Act (JCFA), a general-purpose committee may make a maximum "campaign contribution" (up to $25,000) to a state-wide judicial candidate and a max-

imum "officeholder contribution" (up to an additional $25,000) before a general election. (AOR 673)

Summary

No. The JCFA prescribes a $25,000 per-election limit on "political contributions" from general-purpose committees to a judicial candidate or officeholder regardless of whether classified as a "campaign contribution" or "officeholder" contribution.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 14, 2022.

TRD-202205059
Jim Tinley
General Counsel
Texas Ethics Commission
Filed: December 15, 2022

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EAO-584: Whether expenditures made by a candidate to encourage donations to a local food bank are political expenditures when publicized by the candidate on a social media page that is also used for his campaign. (AOR 677)

Summary

Yes. Expenditures incurred by a candidate in connection with charitable fundraising are political expenditures if the candidate promotes the activity on his campaign's social media page.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 14, 2022.

TRD-202205060
Jim Tinley
General Counsel
Texas Ethics Commission
Filed: December 15, 2022

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER R. TELECOMMUNICATIONS IN MANAGED CARE SERVICE COORDINATION AND ASSESSMENTS

1 TAC §§353.1501 - 353.1506

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §353.1501, concerning Purpose; §353.1502, concerning Definitions; §353.1503, concerning Use of Telecommunications in Assessments; §353.1504, concerning Use of Telecommunications in Service Coordination and Service Management; §353.1505, concerning Additional Requirements for Assessments and Service Coordination in STAR+PLUS and STAR Kids; and §353.1506, concerning Additional Requirements for Assessments and Service Management in STAR Health in new Subchapter R, concerning Telecommunications in Managed Care Service Coordination and Assessments.

BACKGROUND AND PURPOSE

The proposed new rules implement Texas Government Code §533.039, as added by House Bill (H.B.) 4, 87th Texas Legislature, Regular Session, 2021. Section 533.039 of the Texas Government Code requires HHSC to establish by rule policies and procedures that allow a Medicaid managed care organization (MCO) to conduct assessments and provide care coordination services using telecommunications and information technology, to the extent permitted by federal law.

During rule development, HHSC considered a number of factors, including the following statutorily-required considerations: (1) the extent to which a managed care organization determines using the telecommunications or information technology is appropriate; (2) whether the recipient requests an assessment or service coordination visit using telecommunications or information technology; (3) whether the recipient consents to the use of telecommunications or information technology; (4) the feasibility of conducting in-person visits during a public health emergency or natural disaster; and (5) whether HHSC finds the use of telecommunications or information technology is appropriate under the circumstances.

HHSC consulted with the Centers for Medicare & Medicaid Services (CMS) for guidance related to the implementation of H.B. 4. CMS advised that Texas must deploy an assessment method that is adequate to develop a person-centered plan that meets the requirements in the Code of Federal Regulations (CFR) Title 42 §441.301(c)(2). CMS further advised that Texas must meet the health and welfare assurances in 42 CFR §441.302 for each waiver participant and determine if its assessment tools require in-person visual observations.

SECTION-BY-SECTION SUMMARY

Proposed new §353.1501 affirms that the purpose of the rules in new Subchapter R is to establish requirements for the use of telecommunications in Medicaid managed care for service coordination and assessments conducted by MCOs who contract with HHSC.

Proposed new §353.1502 contains definitions for terms used in new Subchapter R.

Proposed new §353.1503 details requirements applicable to assessments. MCOs must conduct initial assessments and annual reassessments using HHSC-developed tools in-person, including tools for STAR+PLUS Home and Community Based Services eligibility, STAR Kids (Screening and Assessment Instrument), and STAR Health for Medically Dependent Children Program eligibility (Screening and Assessment Instrument). In STAR+PLUS, STAR Kids, and STAR Health, initial and annual functional reassessments using HHSC-developed tools for services such as personal assistance services, personal care services, and Community First Choice must also be conducted in person. Change in condition assessments that require or potentially require a change in the Resource Utilization Group (RUG) level must be conducted in person. For change in condition assessments that do not require or potentially require a change in the RUG level, the MCO may offer members a choice of audio-visual communication in place of in-person, if the MCO obtains and documents verbal consent.

Proposed new §353.1504 details requirements applicable to service coordination or service management. Members of the STAR+PLUS program who are designated at levels 1 or 2 for service coordination must receive at least one in-person service coordination visit per year. Similarly, all STAR Kids members must receive at least one in-person service coordination visit per year. An in-person assessment in STAR+PLUS and STAR Kids, as required in proposed new §353.1503, satisfies the annual in-person service coordination visit required for level 1 and 2 members in STAR+PLUS and the annual in-person service coordination visit in STAR Kids. MCOs may offer members in STAR+PLUS and STAR Kids a choice of audio-visual communication for service coordination in place of an in-person visit if no assessment is occurring. The proposed rules specify requirements around audio-visual service coordination, including the responsibility of the MCO to obtain and document member or member legally authorized representative verbal approval for the use of audio-visual communication during a service

coordination visit. STAR Health MCOs may offer a choice of audio-visual or telephonic communication service management in place of an in-person visit if no assessment is occurring.

Proposed new §353.1505 contains additional requirements related to assessments and service coordination in STAR+PLUS and STAR Kids. Information technology, including text or email, may not be used as the sole means of conducting an assessment or service coordination, but may supplement audio-visual or in-person assessments. HHSC may also require an MCO to discontinue service coordination or assessments using telecommunications on a case-by-case basis, if HHSC determines that the discontinuation is in the best interest of the member. The proposed rule contains requirements for an MCO to obtain verbal consent for audio-visual communication in place of an in-person visit and allows an MCO to use their discretion on how to document verbal consent, but requires the MCO to produce the documentation of verbal consent for audit and compliance purposes. The proposed rule requires an MCO to honor a member's request for in-person service coordination or assessments unless HHSC issues direction to MCOs during a declared state of disaster that service coordination or assessments must be conducted using audio-only communication or audio-visual communication due to the specific nature of a governor declared disaster.

Proposed new §353.1506 contains additional requirements related to assessments and service management in STAR Health. The proposed new rule contains requirements similar to the requirements in proposed new §353.1505 for STAR+PLUS and STAR Kids. The proposed rule allows an MCO to use their discretion on how to document verbal consent, but requires the MCO to produce the documentation of verbal consent for audit and compliance purposes. The proposed rule requires an MCO to honor a member's request for in-person service coordination or assessments unless HHSC issues direction to MCOs during a declared state of disaster that service management or assessments must be conducted using audio-only communication or audio-visual communication due to the specific nature of a governor declared disaster.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there may be a fiscal impact to state government based on future MCO experience reported to HHSC. The proposed rules require MCOs to use HIPAA-compliant products to conduct service coordination and assessments using audio-visual communication, and to potentially alter their business practices to ensure verbal consent is documented in a HIPAA-compliant manner. These costs could be offset by savings in travel expenses and efficiencies achieved using telecommunications. Any impact related to managed care capitation payments will be realized in the future rating periods as the experience data are reported. The total costs to state and local government cannot be estimated.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create new rules;

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

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

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

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

Trey Wood has also determined that there will be no adverse effect on small businesses, micro-businesses, or rural communities. The rules only apply to Medicaid MCOs, and no Texas Medicaid MCO qualifies as a small business or micro-business or rural community. It is anticipated that rural communities will not be adversely impacted because no current Medicaid MCOs are owned by rural hospital districts.

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

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, Medicaid managed care members in the STAR+PLUS and STAR Kids programs will benefit from the choice to use audio-visual communication for required in-person service coordination visits in Medicaid managed care when an assessment is not being conducted. In addition, members of STAR+PLUS, STAR Health and STAR Kids programs will have a choice of audio-visual assessments in lieu of in-person assessments that involve service adjustments (increased hours of personal assistance services, nursing, etc.) and do not involve a RUG change.

Trey Wood has also determined that for the first five years the rules are in effect, Medicaid MCOs may incur costs to comply. The rules require MCOs to use HIPAA-compliant products to conduct service coordination and assessments using audio-visual communication, and to potentially alter their business practices to ensure verbal consent is documented in a HIPAA-compliant manner. Any impact to managed care monthly capitation payments will be realized in future rating periods as the experience data are reported. The total costs to comply cannot be estimated.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled by webinar for January 11, 2023, starting at 10:00 a.m. (central time). To register for the webinar, go to: https://register.gotowebinar.com/register/4701130617484521305

Persons requiring further information, special assistance, or accommodations should contact Laura Jourdan at (512) 438-4363.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.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; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R055" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to act as the single state agency designated to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Government Code §533.039(b) which directs HHSC, by rule, to establish policies and procedures allowing managed care organizations to conduct assessments and care coordination services using telecommunications or information technology.

The new sections affect Texas Government Code §531.0055 and Texas Government Code §533.039.

§353.1501. Purpose.

This subchapter establishes requirements for the use of telecommunications in Medicaid managed care for service coordination and assessments conducted by managed care organizations contracted with the Texas Health and Human Services Commission.

§353.1502. Definitions.

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

(1) Assessments--Managed care organization (MCO) evaluation of a member's medical and functional service needs, including community-based long-term services and supports, behavioral health services, therapies (e.g., physical, occupational, speech), and nursing services. This includes the MCO's completion of program-specific instruments and forms.

(2) Audio-only--An interactive , two-way audio communication that uses only sound and that meets the privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication. Audio-only does not include face-to-face communication.

(3) Audio-visual--Interactive, two-way audio and video communication that conforms to privacy requirements under the Health Insurance Portability and Accountability Act. Audio-visual does not include audio-only or in-person communication.

(4) C.F.R.--Code of Federal Regulations.

(5) Change in condition--A significant change in a member's health, caregiver support, or functional status that will not normally resolve itself without further intervention and requires review of and revision to the member's current service plan or individual service plan.

(6) Community-based long-term services and supports (LTSS)--Services provided to a qualified member in their home or another community-based setting necessary to allow the member to remain in the most integrated setting possible. Community-based LTSS includes Medicaid state plan services available to all members, as well as services available to members who qualify for the Home and Community Based Services (HCBS) Program or Medicaid 1915(c) waiver programs, including the STAR+PLUS Home and Community-Based Services (HCBS) Program and the Medically Dependent Children Program. Community-based LTSS is available to both HCBS -eligible and non-HCBS eligible members. Community-based LTSS in Medicaid managed care varies by program model.

(7) Community First Choice (CFC)--A Medicaid state plan benefit described in 1 TAC Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

(8) Covered services--Unless a service or item is specifically excluded under the terms of the state plan, a federal waiver, a managed care services contract, or an amendment to any of these, the phrase "covered services" means all health care, long term services and supports, nonemergency medical transportation services, or dental services or items that the MCO must arrange to provide and pay for on a member's behalf under the terms of the contract executed between the MCO and the Texas Health and Human Services Commission, including:

(A) all services or items comprising "medical assistance" as defined in Human Resources Code §32.003; and

(B) all value-added services under such contract.

(9) Declared state of disaster--A State of Disaster declared by the governor in accordance with Texas Government Code §418.014.

(10) Face-to-face--In-person or audio-visual communication that meets the requirements of the Health Insurance Portability and Accountability Act. Face-to-face does not include audio-only communication.

(11) Functionally necessary covered services--Community-based long-term services and supports provided to assist members with activities of daily living based on a functional assessment of the member's activities of daily living and a determination of the amount of supplemental supports necessary for the member to remain independent or in the most integrated setting.

(12) Healthcare service plan--An individualized plan developed with and for a member with special healthcare needs in the STAR Health program. The healthcare service plan includes the following:

(A) the member's history;

(B) a summary of current medical and social needs and concerns;

(C) short and long-term needs and goals; and

(D) a treatment plan to address the member's physical, psychological, and emotional healthcare problems and needs, including:

(i) a list of required services;

(ii) the frequency of each service;

(iii) a description of who will provide each service; and

(iv) for a member in the Early Childhood Intervention program, the individual family service plan.

(13) HHSC--The Texas Health and Human Services Commission or its designee. HHSC is the single state agency charged with administration and oversight of the Texas Medicaid program, including Medicaid managed care. HHSC's authority is established in Texas Government Code Chapter 531.

(14) HIPAA--Health Insurance Portability and Accountability Act. Collectively, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§1320d et seq., and regulations adopted under that act, as modified by the Health Information Technology for Economic and Clinical Health Act (HITECH) (P.L. 111-105), and regulations adopted under that act at 45 CFR Parts 160 and 164.

(15) Individual service plan (ISP)--An individualized and person-centered plan in which a member enrolled in the STAR Kids, STAR Health or STAR+PLUS HCBS program operated by an MCO, with assistance as needed, identifies and documents the member's preferences, strengths, and health and wellness needs in order to develop short term objectives and action steps to ensure personal outcomes are achieved within the most integrated setting by using identified supports and services. The ISP is supported by the results of a member's program-specific assessment and must meet the requirements of 42 C.F.R. §441.301.

(16) Information technology--Includes text, email, fax, secure transmission of clinical information, and HIPAA-compliant telecommunication tools such as health plan websites where a member or the member's legally authorized representative can access the member's healthcare information, including service plans.

(17) In-person (or in person)--Within the physical presence of another person. In-person or in person does not include audio-visual or audio-only communication.

(18) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may, depending on the circumstances, include a parent, guardian, or managing conservator of a minor, or the guardian of an adult, or a representative designated pursuant to 42 C.F.R. §435.923.

(19) Managed care organization (MCO)--An entity licensed and approved by the Texas Department of Insurance with which HHSC contracts to provide Medicaid services and that complies with Chapter 353 of this title (relating to Medicaid Managed Care).

(20) Medical consenter--The person who may consent to medical care for a member under Texas Family Code Chapter 266.

(21) Medically Dependent Children Program (MDCP)--A 1915(c) waiver program that provides community-based services to assist Medicaid beneficiaries under age 21 to live in the community and avoid institutionalization.

(22) Medically necessary--Has the meaning as defined in §353.2 of this chapter (relating to Definitions).

(23) Medical Necessity Level of Care (MN/LOC)--An assessment instrument used to determine medical necessity for a nursing facility as defined by 26 TAC §554.2601. An MN/LOC is required for STAR+PLUS HCBS Program and CFC eligibility.

(24) Member--A person who is eligible for benefits under Medicaid, is in a Medicaid eligibility category included in the Medicaid managed care program, and is enrolled in a Medicaid MCO.

(25) Minimum data set (MDS)--Has the meaning as defined in 26 TAC §554.101.

(26) Nursing facility--An entity that provides organized and structured nursing care and services, and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(27) Nursing facility level of care--The determination that the level of care required to adequately serve a member is at or above the level of care provided by a nursing facility.

(28) Person-centered care--An approach to care that focuses on members as individuals and supports caregivers working most closely with them. It involves a continual process of listening, testing new approaches, and changing routines and organizational approaches in an effort to individualize and de-institutionalize the care environment.

(29) Resident Assessment Instrument (RAI)--Has the meaning as defined in 26 TAC §554.101.

(30) Resource Utilization Group (RUG)--A categorization method, consisting of multiple categories based on the minimum data set core elements in a resident assessment instrument, that is used to determine a recipient's service and care requirements for a nursing facility. A RUG determination is necessary for MDCP and the STAR+PLUS HCBS Program eligibility because these programs require a nursing facility level of care.

(31) Service coordination--A specialized care management service that is performed or arranged by the MCO to identify needs, including physical health, mental health services and long term support services, facilitate development of a service plan or individualized service plan to address those identified needs, and coordination of services among the member's primary care provider, specialty providers, and non-medical providers to ensure timely access to covered services, non-capitated services, and community services.

(32) Service coordinator--The person with primary responsibility for providing service coordination to Medicaid managed care members.

(33) Service management--A clinical service performed by the STAR Health MCO for members with special health care needs and other members in the STAR Health program when appropriate to facilitate development of a healthcare service plan and coordination of clinical services among a member's primary care provider and specialty providers to ensure members have access to, and appropriately utilize, medically necessary covered services.

(34) Service manager--The person with primary responsibility for providing service management to STAR Health members.

(35) Service plan (SP)--An individualized and person-centered plan in which a member, with assistance as needed, identifies and documents his or her preferences, strengths, and needs in order to develop short-term objectives and action steps to ensure personal outcomes are achieved within the most integrated setting by using identified supports and services. The service plan is supported by the results of the member's program-specific assessment. In STAR+PLUS, a service plan applies to members who are not enrolled in the STAR+PLUS HCBS Program.

(36) STAR+PLUS Home and Community-Based Services (HCBS) Program--The program that provides person-centered care services that are delivered in the home or in a community setting, as au-

thorized through a federal waiver under §1115 of the Social Security Act, to qualified Medicaid-eligible clients who are age 21 or older, as cost-effective alternatives to institutional care in nursing facilities.

(37) Telecommunications--An exchange of information by electronic and electrical means.

(38) Telephonic--Audio-only communication using a telephone. Telephonic communication does not include audio-visual communication.

(39) Verbal consent--The spoken agreement of a member, a member's legally authorized representative, or a member's medical consenter.

§353.1503. Use of Telecommunications in Assessments.

(a) STAR+PLUS.

(1) STAR+PLUS managed care organizations (MCOs) must conduct initial assessments and annual reassessments using HHSC-developed tools for STAR+PLUS HCBS Program eligibility in-person.

(2) STAR+PLUS MCOs must conduct all initial and annual assessments using HHSC-developed tools for functionally necessary covered services such as personal assistance services, Community First Choice services, and day activity and health services, in -person.

(3) Change in condition assessments that require or potentially require a change in the Resource Utilization Group (RUG) level must be conducted in-person.

(4) MCOs may offer to STAR+PLUS members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(5) A STAR+PLUS MCO may not conduct an initial assessment, annual reassessment, or change in condition assessment without the presence of the member.

(6) During a declared state of disaster, HHSC may issue direction to STAR+PLUS MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR+PLUS members who reside in the area subject to the declared state of disaster.

(7) STAR+PLUS MCOs must adhere to §353.1153 of this chapter (relating to STAR+PLUS Home and Community Based Services (HCBS) Program) for STAR+PLUS assessments and service planning, and §353.1(c) of this chapter (relating to Purpose) regarding compliance with all terms of the contract with HHSC.

(b) STAR Kids.

(1) The STAR Kids MCO must administer the initial assessment and annual reassessments using the HHSC-developed STAR Kids assessment tool in-person.

(2) Change in condition assessments that require or potentially require a change in the RUG level must be conducted in-person.

(3) MCOs may offer STAR Kids members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(4) A STAR Kids MCO may not conduct an assessment without the presence of the member.

(5) During a declared state of disaster, HHSC may issue direction to STAR Kids MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR Kids members who reside in the area subject to the declared state of disaster.

(6) STAR Kids MCOs must adhere to §353.1155 of this chapter (relating to Medically Dependent Children Program) for assessments and service planning, and §353.1(c) of this chapter regarding compliance with all terms of the contract with HHSC.

(c) STAR Health.

(1) The STAR Health MCO must administer the HHSC-developed assessment tool for initial Medically Dependent Children Program (MDCP) eligibility and annual reassessments in -person.

(2) The STAR Health MCO must conduct all initial and annual reassessments using HHSC-developed tools for functionally necessary covered services such as personal assistance services, personal care services, and Community First Choice services, in -person.

(3) Change in condition assessments that require or potentially require a change in the RUG level must be conducted in-person.

(4) MCOs may offer STAR Health members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(5) A STAR Health MCO may not conduct an assessment without the presence of the member.

(6) During a declared state of disaster, HHSC may issue direction to STAR Health MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR Health members who reside in the area subject to the declared state of disaster.

(7) A STAR Health MCO must adhere to §353.1155 of this chapter for MDCP assessments and service planning, and §353.1(c) of this chapter regarding compliance with all terms of the contract with HHSC.

§353.1504. Use of Telecommunications in Service Coordination and Service Management.

(a) STAR+PLUS.

(1) Managed care organizations (MCOs) must ensure all level 1 and 2 members receive at least one in-person service coordination visit per year.

(2) An in-person assessment satisfies the annual in-person service coordination visit requirement for level 1 and 2 members.

(3) MCOs may offer level 1 and 2 members in STAR+PLUS a choice of audio-visual communication for service coordination in place of an in-person visit if no assessment is occurring.

(A) When an MCO conducts service coordination using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for service coordination that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(4) During a declared state of disaster, HHSC may issue direction to MCOs regarding whether service coordination required to be conducted using face-to-face communication may be conducted through audio-only communication.

(5) MCOs may offer level 3 members in STAR+PLUS a choice of in-person, audio-visual, or audio-only communication for service coordination.

(6) Nursing facility residents must have at least one in-person service coordination visit per year for service planning purposes.

(7) STAR+PLUS MCOs must conduct nursing facility discharge planning visits in-person, including when a member is transitioning to the STAR+PLUS HCBS Program. The in-person nursing facility discharge planning visit may satisfy the requirement for the in-person STAR+PLUS HCBS initial assessment when a nursing facility member is transitioning to the STAR+PLUS HCBS Program. The requirement to conduct the in-person STAR+PLUS HCBS initial assessment is satisfied during the in-person nursing facility discharge planning visit if the MCO:

(A) uses the member's valid Minimum Data Set (MDS) assessment to gather the information necessary to complete the STAR+PLUS HCBS individual service plan; or

(B) conducts a Medical Necessity and Level of Care assessment if the member does not have a valid MDS or in lieu of the member's valid MDS to gather the information necessary to complete the STAR+PLUS HCBS individual service plan.

(8) MCOs must provide service coordination in accordance with §353.609 of this chapter (relating to Service Coordination).

(b) STAR Kids.

(1) MCOs must ensure all members receive at least one in-person service coordination visit per year.

(2) An in-person assessment using the HHSC-developed STAR Kids assessment tool satisfies the annual in-person service coordination visit requirement.

(3) MCOs may offer STAR Kids members a choice of audio-visual communication for service coordination in place of in-person service coordination visits if no assessment is occurring.

(A) When an MCO conducts service coordination using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for service coordination that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(4) During a declared state of disaster , HHSC may issue direction to MCOs regarding whether service coordination required to be conducted using face-to-face communication may be conducted through audio-only communication.

(5) STAR Kids MCOs must provide service coordination in accordance with §353.1205 of this chapter (relating to Service Coordination).

(c) STAR Health.

(1) The MCO must ensure that the service manager for a Medically Dependent Children Program member continues to make re-

quired contacts with the member and their medical consenter to ensure the member's needs are met.

(2) The MCO may offer members or their medical consenter a choice of using audio-visual or telephonic communication to conduct a service management visit in place of conducting the visit in-person if an assessment is not conducted during the visit.

(A) When an MCO conducts service management using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) The MCO must inform members who utilize audio-visual or telephonic communication for service management that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

§353.1505. Additional Requirements for Assessments and Service Coordination in STAR+PLUS and STAR Kids.

(a) Information technology, including text or email, may supplement audio-visual communication or in-person assessments, but may not be used as the sole means of conducting an assessment or service coordination visit.

(b) When a managed care organization (MCO) conducts an assessment or service coordination visit using telecommunications, the MCO must:

(1) monitor the health care services provided to the recipient for evidence of fraud, waste, and abuse;

(2) determine whether additional social services or supports are needed;

(3) document verbal consent to use telecommunications; and

(4) adhere to HIPAA, including the use of a HIPAA-compliant audio-visual communication product .

(c) HHSC may, on a case-by-case basis, require an MCO to discontinue telecommunications for the delivery of service coordination or assessments if HHSC determines that the discontinuation is in the best interest of the member.

(d) An MCO may conduct additional in-person visits with members, as determined by the MCO.

(e) MCOs must have a means to document verbal consent to the use of telecommunications for the delivery of assessments or service coordination.

(f) Where HHSC contractually requires face-to-face service coordination, the MCOs may conduct these visits in-person or using audio-visual means. Audio-visual may not be used if an assessment is being conducted during the service coordination visit, unless HHSC issues direction allowing audio-visual assessments during a declared state of disaster.

(g) MCOs may not leave blank fields in assessment tools, including tools to evaluate home and community-based service needs, nursing needs, and functional needs. Audio-visual is not an appropriate means of assessing a member if it results in blank fields.

(h) MCOs must explain to the member or the member's LAR what verbal consent means, and what the member or member's LAR is consenting to.

(1) The verbal consent for audio-visual communication in place of an in-person visit applies only to that visit.

(2) Verbal consent must be obtained for each service coordination visit conducted using audio-visual communication in place of an in-person visit.

(i) When telephonic service coordination visits are authorized by contract, these visits may continue to be provided by telephonic communication.

(j) An MCO must honor a member's request to receive service coordination or assessments in-person. Only when HHSC issues direction to MCOs during a declared state of disaster that service coordination or assessments must be conducted using audio-visual or audio-only communication due to the specific nature of a governor declared disaster, may an MCO deny a member's request for an in-person visit.

(k) MCOs may use their discretion on how to document verbal consent in a HIPAA-compliant manner. However, MCOs must be able to produce the documentation of verbal consent for audit and compliance purposes.

§353.1506. Additional Requirements for Assessments and Service Management in STAR Health.

(a) Information technology, including text or email, may supplement audio-visual or in-person assessments, but may not be used as the sole means of conducting an assessment or service management visit.

(b) When a managed care organization (MCO) conducts an assessment or service management visit using telecommunications, the MCO must:

(1) monitor the health care services provided to the recipient for evidence of fraud, waste, and abuse;

(2) determine whether additional social services or supports are needed;

(3) document verbal consent to use telecommunications; and

(4) adhere to HIPAA, including the use of a HIPAA-compliant audio-visual communication product .

(c) HHSC may, on a case-by-case basis, require an MCO to discontinue telecommunications for the delivery of service management or assessments if HHSC determines that the discontinuation is in the best interest of the member.

(d) An MCO may conduct additional in-person visits with members, as determined by the MCO.

(e) MCOs must have a means to document verbal consent to the use of telecommunications for the delivery of assessments or service management.

(f) Audio-visual may not be used if an initial or annual assessment for the Medically Dependent Children Program or functionally necessary covered services is being conducted, unless HHSC issues direction allowing audio-visual assessments during a declared state of disaster.

(g) MCOs may not leave blank fields in assessment tools, including tools to evaluate home and community-based service needs, nursing needs, and functional needs. Audio-visual is not an appropriate means of assessing a member if it results in blank fields.

(h) MCOs must explain to the member or medical consenter what verbal consent means, and what the member or medical consenter is consenting to.

(1) The verbal consent for an audio-visual in place of an in-person visit applies only to that visit.

(2) Verbal consent must be obtained for each audio-visual service coordination visit conducted in place of an in-person visit.

(i) When telephonic screenings or service management visits are authorized by contract, these visits may continue to be provided by telephonic communication.

(j) An MCO must honor a member's request to receive service management or assessment in person. Only when HHSC issues direction to MCOs during a declared state of disaster that service management or assessments must be conducted using audio-visual or audio-only communication due to the specific nature of a governor declared disaster, may an MCO deny a member's request for in-person contact.

(k) MCOs may use their discretion on how to document verbal consent in a HIPAA-compliant manner. However, MCOs must be able to produce the documentation of verbal consent for audit and compliance purposes.

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 December 13, 2022.

TRD-202205006
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 438-4363

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Part 1, Chapter 3, Boll Weevil Eradication Program, Subchapter A, (Election Procedures), §§3.1 - 3.7, 3.10, 3.11; Subchapter B (Establishment of Rules, Procedures, and Methods of Treatment), §§3.22 - 3.24; Subchapter C (Prohibition of Planting of Cotton), §§3.51, 3.52, and 3.54; Subchapter D (Requirements for Participation in the Eradication Program and Administrative Penalty Enforcement), §§3.71 - 3.76 and 3.78; Subchapter E (Creation of Eradication Zones), §§3.100, 3.102, and 3.103; Subchapter F (General Procedures), §§3.201 - 3.203 and 3.205; Subchapter H (Use of Bio-Intensive Controls in Active Boll Weevil Eradication Zones), §§3.400 - 3.403; and Subchapter J (Organic Cotton Rules), §§3.601, 3.602, and 3.604 - 3.609.

The Department identified the need for the proposed amendments to Chapter 3, Subchapters A - F, H, and J during the review of these subchapters conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue. During the rule review, Department staff solicited input from the Board of Directors (Board) of the Texas Boll Weevil Eradication Foundation (Foundation), and the proposed rule amendments were reviewed and discussed at the Board's meeting on August 31, 2022.

The proposed amendments to §3.1 update a reference to the United States Department of Agriculture (USDA) Farm Service Agency (FSA) and add "Texas Boll Weevil Eradication Foundation" to clarify the reference to the Board.

The proposed amendments to §3.2 add a subsection allowing an unopposed Board candidate to assume a Board position without holding an election to expedite the election process and increase efficiency.

The proposed amendments to §3.3 add "Texas Boll Weevil Eradication Foundation" to clarify the reference to its Board, update references to Chapter 74 of the Texas Agriculture Code (Code) and Texas A&M's AgriLife Extension Service, and change notice requirements for board elections and referenda from publication in a newspaper to posting on the Foundation's website, which represents equivalent public notice to affected stakeholders and members of the public and is more cost-effective notice.

The proposed amendments to §3.4 updates the content requirements of ballots for Board elections to comport with the current Foundation practices.

The proposed amendment to §3.5 clarifies the reference to the geographic area by which tabulation and recording of votes will occur.

The proposed amendments to §3.6 supplement references to "zones" to "eradication zones" for greater clarity and to conform with usage throughout Code, Chapter 74 and update references to the FSA and statutory references to Code, Chapter 74.

The proposed amendments to §3.7 clarifies references to "zones" to mean "eradication zones" for greater clarity and to conform with usage Code, Chapter 74 and update statutory references to Code, Chapter 74.

The proposed amendments to §3.10 update references to the FSA and statutory references to Code, Chapter 74 and revise language to require either the signature of a grower or a person with the authority to sign for a grower on a petition for changing areas in an eradication zone.

The proposed amendments to §3.11 change references to the Department to conform with usage throughout Title 4, Part 1; modify language to require either the signature of a grower or a person with the authority to sign for a grower on a petition for recalling a referendum in an eradication zone; and update a reference to the FSA, as well as statutory references to Code, Chapter 74.

The proposed amendments to §3.22 remove unnecessary definitions for terms already defined for Title 4, Part 1 in Section 1.1, which apply to the entire title; remove definitions no longer used in this chapter; remove a definition for "zone" because it is defined in Code, Section 74.002, and update the definition for the Foundation.

The proposed amendments to §3.23 remove an outdated reference to the now nonexistent National Boll Weevil Cooperative

Control program, update a reference to pesticide rules in Chapter 7 of Title 4, Part 1 and to Texas A&M AgriLife Extension Service county agents.

The proposed amendments to §3.24 update a reference to the Texas Natural Resources Conservation Commission, now known as the Texas Commission on Environmental Quality.

The proposed amendments to §3.51 remove an unnecessary definition for a term already defined for Title 4, Part 1 in Section 1.1, which apply to the entire title.

The proposed amendments to §3.52 clarifies internal references to the Department's administrative rules and a reference to the Foundation's Board.

The proposed amendments to §3.54 change notice requirements to growers who do not comply with cotton planting prohibition notices from publication in a newspaper to the Foundation's website, which represents equivalent public notice to affected stakeholders and members of the public and is more cost-effective notice.

The proposed amendment to §3.71 clarifies internal references to the Department's administrative rules.

The proposed amendments to §3.72 update a reference to the FSA and correct a grammatical error.

The proposed amendments to §3.73 change notice requirements for participation in newly established eradication zones from publication in a newspaper to the Foundation's website, which represents equivalent public notice to affected stakeholders and members of the public and is more cost-effective notice.

The proposed amendments to §3.74 correct a grammatical error to the rule's heading and update an internal reference within this chapter.

The proposed amendments to §3.75 revise an internal reference within this chapter; update how a person can protest the issuance of a notice of violation and assessment of a penalty payment involving the failure to pay an eradication zone assessment; add language allowing the issuance of an order for such a penalty payment in the event someone does not respond to a notice; remove language requiring a hearing be held in the event someone does not respond to a notice; update a reference to the State Office of Administrative Hearings' rules of procedure; and incorporate language from Code, Section 12.020, the Department's general statute on administrative penalties and related hearings, which establishes a 20-day period during which a hearing on a notice may be requested.

The proposed amendments to §3.76 revise a reference to Code, Section 74.115; update how assessment penalty exemption forms can be obtained from the Department; limit assessment penalty exemptions to the particular crop year for which they are sought; and clarify that such future exemptions would apply to a new crop.

The proposed amendments to §3.100 replace references to the "commissioner of agriculture" with "commissioner" to conform with usage in Chapter 74 of the Code and in this chapter.

The proposed amendment to §3.102 changes its heading to "Eradication Zone Activation; Grower Approval" to make a reference to eradication zones to conform with usage in Chapter 74 of the Code and in this chapter.

The proposed amendments to §3.103 modify a cross reference to §3.102 to account for its new, proposed heading.

The proposed amendments to §3.201 clarifies a reference to the Foundation's Board; increase the threshold amount for certain purchases or lease agreements, including bid announcements and formal solicitations, for which the Foundation must receive Department approval; and update a reference to Chapter 74, Subchapter D of the Code. This increased delegation of authority to the Foundation reflects current market prices for goods and services necessary to facilitate the Foundation's eradication efforts.

The proposed amendments to §3.202 replace an initial reference to the foundation to "Texas Boll Weevil Eradication Foundation" and add "foundation" to the Board for greater clarity.

The proposed amendments to §3.203 replace an initial reference to the foundation to "Texas Boll Weevil Eradication Foundation" for greater clarity and remove an unnecessary reference to Code, Section 74.1011.

The proposed amendments to §3.205 update references to the Department to conform with usage throughout Title 4, Part 1; revise statutory references to Code, Section 74.1095 and Chapter 2001 of the Texas Government Code, remove a reference to a repealed statute; and modify references to the Commissioner for consistency with Chapter 74 of the Code and this chapter.

The proposed amendments to §3.400 remove an unnecessary definition for a term already defined for Title 4, Part 1 in Section 1.1, which applies to the entire title and update the Foundation's official title.

The proposed amendments to §3.401 and §3.403 change references to the Department for consistency with usage throughout Title 4, Part 1.

The proposed amendment to §3.402 corrects an internal reference for consistency with the remainder of this chapter.

The proposed amendments to §3.601 remove an unnecessary definition for a term already defined for Title 4, Part 1 in Section 1.1, which applies to the entire title; update the Foundation's official title; update a definition for "certified organic crop" by removing a portion that refers to a repealed rule within this title allowing for emergency pest or disease treatments for organic or transitional crop; and update a definition for "transitional crop" by replacing an internal reference to a repealed rule within this title outlining the requirements for transitional crop to the current rule, §18.300.

The proposed amendments to §3.602 deletes surplus language and clarifies an internal reference to this chapter.

The proposed amendments to §3.604 remove a reference to a repealed rule allowing for emergency pest or disease treatments for organic or transitional crop.

The proposed amendments to §3.605 update an internal reference within this chapter and delete a reference to a repealed rule allowing for organic or transitional crop to be treated under former §18.10.

The proposed amendments to §3.606 revises an internal reference within this chapter and remove a reference to a repealed rule providing for conventional treatment of organic or transitional crop under former §18.10 .

The proposed amendments to §3.607 modify references to the Commissioner for consistency with Chapter 74 of the Code and this chapter.

The proposed amendments to §3.608 update references to the FDA and the USDA Risk Management Agency; update an internal reference within this chapter; remove a reference to a repealed rule allowing for compensation for destroyed organic or transitional cotton; and remove a related section providing compensation to such cotton that is treated, rather than destroyed, under §3.606.

The proposed amendments to §3.609 corrects an internal reference within the Department's administrative rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Phillip Wright, the Administrator for Regulatory Affairs for Agriculture and Consumer Protection, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Wright has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be improved readability and clarity of the rules, as well as increased facilitation for the Foundation to carry out its eradication efforts throughout Texas. Mr. Wright has also determined there are no anticipated economic costs to persons required to comply with the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Wright has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Wright provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect:

(1) no government programs will be created or eliminated;

(2) no employee positions will be created or eliminated;

(3) there will be no increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) no new regulations will be created by the proposal;

(6) there will be no expansion, limitation, or repeal of existing regulation;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the Texas economy.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

Written comments on the proposed amendments may be submitted by mail to Mr. Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to morris.karam@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. ELECTION PROCEDURES

4 TAC §§3.1 - 3.7, 3.10, 3.11

The amendments are proposed pursuant to Section 74.114 of the Code, which requires the Department to adopt rules for voting in Board elections and referenda to establish or continue eradication zones and Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

The code affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.1. Voter Eligibility.

(a) A cotton grower is the person defined in the Texas Agriculture Code, §74.102(5). A cotton grower is eligible to vote if the grower grows [~~they grow~~] cotton in a boll weevil eradication zone or area in which a referendum is being held and receive direct income from the sale of cotton in the crop year in which the referendum is being held. This eligibility requirement will be determined from the official list of the Texas office of the United States Department of Agriculture [~~Consolidated~~] Farm Service Agency (FSA) of operators or crop-sharing landlords who planted cotton in the zone or area in which a referendum is being held in the crop year in effect at the time of the referendum. Each entity so identified by the FSA is entitled to vote the number of acres it farms in referenda where voting acreage is required to be considered. In referenda where acreage is not required to be considered, the same entities identified by the FSA are eligible to vote only once in each zone referendum and/or Texas Boll Weevil Eradication Foundation (foundation) board election. For example, if "Smith Farms" certifies cotton acreage with the FSA and receives income as "Smith Farms," then the entity "Smith Farms" is entitled to a vote. If John Smith is the president or agent for "Smith Farms," he would have the authority to vote for that entity. If John Smith also has a separate farming entity under his individual name and receives direct cotton income, he too would be eligible to vote his respective acreage separate from "Smith Farms." In the event a grower or entity meets all other eligibility requirements, but does not certify cotton acreage with FSA in the crop year in which the referendum is held, voter eligibility can be established by providing a copy of a gin receipt or foundation [~~Texas Boll Weevil Eradication Foundation~~] assessment bill for the crop year being voted in order to obtain a ballot.

(b) (No change.)

(c) If a cotton grower has production in more than one zone, the grower may vote in each zone in which the grower [~~he or she~~] meets the eligibility requirements for voting provided at subsection (a) of this section.

§3.2. Board Candidates.

(a) A representative number of members to the foundation's board of directors shall be elected from each established eradication zone for a term not to exceed four years.

(b) In order to be a candidate for board membership, a person must be eligible to vote in the referendum, must reside in the eradication zone that the person [~~he or she~~] is seeking to represent and have at least seven years cotton growing experience.

(c) In order to have a person's [~~his or her~~] name put on the ballot, that [~~a~~] person must file with the department, at least 30 days prior to the date of the election, a petition signed by ten eligible voters

within the eradication zone to be represented. The form for the petition is to be provided by the department.

(d) If only one candidate files the petition described by subsection (c) of this section, the election for that board position is not held, and the unopposed candidate, if otherwise eligible, shall be declared elected to the board at the time the ballots would have otherwise been canvassed.

(e) [~~(d)~~] An eligible voter may vote for a cotton grower whose name does not appear on the ballot by writing that person's name and county of residence on the ballot.

(f) [~~(e)~~] Board candidates are elected by plurality, by receiving the highest number of votes of all candidates for that board position.

§3.3. Conduct of Elections; Notice.

(a) The election of Texas Boll Weevil Eradication Foundation (foundation) board members from each proposed eradication zone shall be held concurrently with the eradication zone referendum or referenda.

(b) (No change.)

(c) A board election and referendum or referenda conducted under the Texas Agriculture Code, Chapter 74, Subchapter D[~~, as amended, or Senate Bill 1814, 75th Legislative Session, 1997,~~] and this chapter [~~these rules~~] must be preceded by at least 45 days' [~~days~~] notice published electronically on, but not limited to, the foundation's website [~~in one or more newspapers published and distributed throughout the proposed or established eradication zone or zones, or area proposed to be added or transferred~~]. The notice shall be published [~~not less than once a week~~] for three consecutive weeks. In addition, direct written notice of the election shall be given to each county extension agent of the Texas A&M AgriLife [~~Agricultural~~] Extension Service (Extension Service) in the eradication zone or zones or area proposed to be added or transferred at least 45 days before the date of the election, referendum, or referenda.

(d) Notice provided in accordance with subsection (c) of this section shall include:

(1) - (6) (No change.)

(7) if a referendum includes a proposition for approval of a third party contractor to carry out an eradication program, in accordance with the [~~Texas Agriculture~~] Code, §74.124, [~~as amended,~~] the name of the proposed contracting party.

(e) A referendum and/or board election conducted under the [~~Texas Agriculture~~] Code, Chapter 74, Subchapter D, [~~as amended, or Senate Bill 1814,~~] and this chapter [~~these rules~~] shall be conducted by mail ballot, with ballots returned by mail to the [~~principal~~] headquarters of the department.

(f) (No change.)

(g) An eligible voter who has not received a ballot from the department, foundation or another source may request a ballot by mail by calling the department headquarters or by contacting the [~~Texas Agricultural~~] Extension Service office in a county within the eradication zone or proposed eradication zone, or other governmental office designated by the department.

(h) Instructions for county extension agents and voters will be available in each election from the department.

§3.4. Ballots.

(a) To be considered valid, a ballot must bear a voter's signature[~~, the amount of acreage of cotton farmed during the crop year determining voter eligibility, if applicable,~~] and title [~~the address of the grower~~].

(b) (No change.)

§3.5. Canvassing of Ballots.

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

(c) Votes will be tabulated and recorded by eradication zone, or if concerning an area being added to a zone, the area specified in the petition submitted to the department, with the following tabulations recorded for each zone or area:

(1) - 10) (No change.)

(d) (No change.)

§3.6. Approval of Eradication Zones, Assessment Rates, Board Elections.

(a) A referendum to establish an eradication [~~a~~] zone, to establish an eradication program in an existing eradication zone, to add a county or area to an existing eradication zone, to transfer an area or county from one statutory eradication zone to another, to discontinue the program in an eradication [~~a~~] zone, or to set an assessment rate must pass by a favorable vote of at least two-thirds of those voting on the referendum or a favorable vote of growers who farm more than 50% of the total acreage of cotton in the relevant eradication zone or area. The total acreage of cotton in each zone or area shall be determined by use of the latest available figures from the Texas office of the United States Department of Agriculture [~~Consolidated~~] Farm Service Agency.

(b) A retention referendum conducted under the Texas Agriculture Code (Code), §74.114,[~~, §74.114(a)~~] and a referendum or proposition included in a referendum to approve use of a third-party [~~third party~~] contractor to carry out an eradication program, must pass by majority vote of growers voting.

(c) If an eradication [~~a~~] zone or program establishment, assessment, or retention referendum conducted under the [~~Texas Agriculture~~] Code, §74.114, is not approved, the department may not conduct another referendum in the same area on that same issue before one year after the date of the election on the failed referendum. In addition, if an eradication [~~a~~] zone is not established or is discontinued, any concurrent board member election has no effect, and the commissioner shall appoint a board member to represent the eradication zone in which the election was held.

(d) If a discontinuation referendum conducted under the [~~Texas Agriculture~~] Code, §74.112, [~~as amended,~~] is not approved, no such referendum may be held within two years of any other referendum in the eradication zone pertaining to establishing or discontinuing the eradication zone.

(e) After the commissioner has certified the referendum and board election and issued certificates of election to any elected board members, those members may act in accordance with the powers provided to them by the [~~Texas Agriculture~~] Code, Chapter 74, Subchapter D[~~, as amended~~].

§3.7. Payment of Eradication Zone Debt upon Discontinuation.

[~~The Texas Agriculture Code, §74.127, provides for payment of a zone's debt in the event of a discontinuation of an eradication program in a zone.~~] If cotton growers voting in a retention referendum conducted under the Texas Agriculture Code (Code), §74.114[~~, §74.114(a)~~], or a recall referendum conducted under the [~~Texas Agriculture~~] Code, §74.112, approve discontinuation of the eradication program in an eradication [~~a~~] zone, all debts of the eradication zone shall be repaid. Assessments shall continue annually on any grower planting cotton in the eradication zone in subsequent years until all debts of the eradication zone are paid.

§3.10. Petitions To Add an Area or County To an Existing Eradication Zone or To Transfer an Area or County in One Eradication Zone to Another Eradication Zone.

(a) Parties wishing to petition for addition or movement into an [~~existing boll weevil~~] eradication zone shall notify the commissioner of their intent in writing. The notice shall include:

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

(4) any other pertinent information on the eradication zone to which the area would be moved or added.

(b) The department shall develop and make available a petition form for the party conducting the petition drive. The completed form must include:

(1) certification by the person signing the petition that the person [~~he or she~~] is an eligible cotton grower or a representative with the authority to sign for the grower in the area proposed to be added or moved by having cotton production in the area proposed to be added or moved or sharing in the proceeds of cotton production in the current crop year;

(2) the complete name and address of the eligible cotton grower [~~or entity~~]; and

[~~(3) a legible signature of the person with authority to sign for the person or entity; and~~]

(3) [~~(4)~~] the date signed.

(c) Only one signature or petition form per grower [~~entity~~] may be gathered.

(d) (No change.)

(e) Grower eligibility to sign a petition shall be determined as follows.

(1) If the petitioning process commences prior to or after traditional cotton production in the area, the immediately preceding cotton crop year information as maintained by the United States Department of Agriculture [~~Consolidated~~] Farm Service Agency [~~of the United States Department of Agriculture~~] (FSA) determines eligibility for having a grower's name on the petition.

(2) If a petition drive crosses crop years, the commissioner shall use the most current complete eligible list of growers in the area proposed to be added or moved as maintained by the FSA, and shall notify the petitioning party of the appropriate date when the eligibility list changes. Thus, if a grower [~~person~~] farmed in a year other than the year determined to be the eligible year, that signature or petition form will not be valid.

(f) Upon receipt of the notice of intent to petition, the department shall notify the petitioning party of the eligible voter/grower list that will be used to determine if the total number of grower signatures or petition forms gathered meets or exceeds 30% of growers in the petitioning area, as required by the Texas Agriculture Code (Code), §74.108(b)[~~, as amended~~].

(g) - (h) (No change.)

(i) Once a petition is received by the department, department staff shall review the petition for compliance with the 30% requirement. The commissioner, at the commissioner's [~~his~~] discretion, may appoint a committee to review the petition.

(j) (No change.)

(k) If a referendum of growers is held, the department shall conduct the referendum to add or move an area or county in the same manner as other referenda conducted under the [~~Texas Agriculture~~] Code, Chapter 74, Subchapter D[~~, as amended,~~] and this subchapter.

(l) If growers approve an area being added or moved to an existing eradication zone, all cotton growers in the proposed area will become part of the amended eradication zone and be subject to assessment and other participation requirements for that eradication zone.

§3.11. Petitions Requesting a Recall Referendum.

(a) Parties wishing to petition for a recall referendum in an [~~existing boll weevil~~] eradication zone shall notify the commissioner of their intent in writing. No recall referendum may be held in an eradication [~~a~~] zone in which a recall or establishment referendum has been held within the preceding two years. If the two-year prohibition period applies, a petition drive conducted under this section may begin no sooner than nine months before the expiration of the two-year period.

(b) The department [~~Department~~] shall develop and make available a petition form for the party conducting the petition drive. The completed form must include:

(1) certification by the person signing the petition that the person [~~he or she~~] is an eligible cotton grower or a person with the authority to sign for the grower in the eradication zone by having cotton production or sharing in the proceeds of cotton production in the current crop year;

(2) the complete name and address of the eligible cotton grower [~~or entity~~]; and

[~~(3) a legible signature of the person with authority to sign for the person or entity; and~~]

(3) [~~(4)~~] the date signed.

(c) Only one signature or petition form per grower [~~entity~~] may be gathered.

(d) (No change.)

(e) Grower eligibility to sign a petition shall be determined as follows.

(1) If the petitioning process commences prior to or after traditional cotton production in the eradication zone, the immediately preceding cotton crop year information as maintained by the United States Department of Agriculture [~~Consolidated~~] Farm Service Agency [~~of the United States Department of Agriculture~~] (FSA) determines eligibility for having a grower's name on the petition.

(2) If a petition drive crosses crop years, the commissioner shall use the most current eligible list of growers as maintained by the FSA, and shall notify the petitioning party of the appropriate date when the eligibility list changes. Thus, if a grower [~~person~~] farmed in a year other than the year determined to be the eligible year, that signature or petition form will not be valid.

(f) Upon receipt of the notice of intent to petition, the department shall notify the petitioning party of the eligible voter/grower list that will be used to determine if the total number of grower signatures or petition forms meets or exceeds 30% of growers in the zone, as required by the Texas Agriculture Code (Code), §74.112(f)[~~, as amended~~].

(g) - (h) (No change.)

(i) Once a petition is received by the department, department staff shall review the petition for compliance with the 30% requirement. The commissioner, at the commissioner's [~~his~~] discretion, may appoint a committee to review the petition.

(j) Within 21 days of receipt of the petition, the department shall notify the petitioning party of a decision. Should the petition meet

all the requirements of this section, the department shall[, and] set a referendum date within 90 days of the date the petition was received by the department [Department, if the petition meets all requirements].

(k) If a referendum of growers is held, the department shall conduct the referendum in the same manner as other referenda conducted under the [Texas Agriculture] Code, Chapter 74, Subchapter D[, as amended,] and this subchapter.

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

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TRD-202205113
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 936-9360

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SUBCHAPTER B. ESTABLISHMENT OF RULES, PROCEDURES, AND METHODS OF TREATMENT

4 TAC §§3.22 - 3.24

The amendments are proposed pursuant to Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

The code affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.22. Definitions.

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

[(1) Commissioner--The Texas Commissioner of Agriculture.]

(1) [(2)] Cultural controls--Manipulation of routine crop production practices to make the environment less favorable to the biological success of pests. Cultural controls for purposes of this subchapter include, but are not limited to, use of prescribed cotton stalk destruction methods and deadlines and use of prescribed uniform planting dates.

[(3) Department--The Texas Department of Agriculture.]

(2) [(4)] Foundation--The Texas [organization designated by the commissioner of agriculture as the official] Boll Weevil Eradication Foundation, Inc. [in accordance with the Texas Agriculture Code, Chapter 74, Subchapter D.]

[(5) Key pests--Serious, perennially occurring persistent species that dominate control practices and that, in the absence of human intervention, commonly attain population densities that cause significant economic losses.]

(3) [(6)] Long-term control plan--A zone-specific plan that is to be implemented against boll weevils during and until eradication is complete.

[(7) Occasional pests--Pests that are generally under natural control but cause significant economic losses only sporadically or in localized areas.]

(4) [(8)] Secondary pests--Pests that generally occur as a result to natural enemy destruction through the use of pesticides directed at other pests.

[(9) Zone--A geographic area in which cotton growers by referendum approve their participation in a boll weevil eradication program.]

§3.23. Protection of Individuals, Livestock, Wildlife, and Honeybee Colonies.

(a) Any applicator [or applicators] retained by the foundation [Boll Weevil Eradication Foundation (the foundation)] to apply or cause to be applied pesticides for the purpose of eradication [of the cotton boll weevil] in an established zone will make such applications in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Texas pesticide laws and regulations, the pesticide label requirements of the product(s) [product] being used, [the federal guidelines under the National Boll Weevil Cooperative Control Program (Environmental Impact Statement (EIS), Volumes 1 and 2),] and any other provisions [special provision] provided for in this section.

(b) The foundation shall establish procedures for each eradication zone that are consistent with [specific parts of] the Texas pesticide regulations relating to prior notification and reentry into sprayed fields and found at §7.37 and §7.38 [§§7.25-7.31] of this title (relating to Prior [Scope of Pesticide Application Standards;] Notification Requirements and [; Worker Reentry into Fields; Reentry Instructions;] Forbidden Pesticide Practices[; Reentry Intervals; and Establishing Reentry Intervals]) to ensure compliance with requirements regarding prior notification and reentry.

(c) The foundation shall establish any eradication zone-specific rules needed in addition to the requirements of subsections (a) and (b) of this section after analyzing each zone for special identified risk to humans, livestock, wildlife, honeybee colonies, or the environment. Such analysis will allow for specific rules to be written by the foundation for each zone with special concerns.

(d) Beekeepers must file the location of their hives and their addresses [address] and phone numbers [number] with the Chief Apiary Inspector, Apiary Inspection Service, Entomology Department, Texas A&M University, College Station, Texas 77843[-2475], so that a list of beekeepers may be prepared for each county and furnished to the foundation. In lieu of filing the location of hives and names and addresses with the chief apiary inspector, any beekeeper may file such information with the Texas A&M AgriLife Extension Service county extension agent for the county in which hives are located. The foundation shall notify or cause to be notified beekeepers located adjacent to any fields being sprayed prior to the application at the earliest time possible to allow the beekeeper to restrict the bees leaving the hive or to move the hives until danger to the bees has diminished. In addition, the foundation will make available the eradication zone plans to any beekeeper upon request.

§3.24. Guidelines for Establishment of Foundation Rules, Procedures, and Methods of Treatment.

(a) (No change.)

(b) The foundation shall establish a treatment regimen that seeks to provide the least possible risk to human health and the environment. The treatment regimen must consider all cultural controls; and, when the treatment regime must consider the use of pesticides,

such pesticides must be considered on the basis of low toxicity and the least potential for environmental hazards. To achieve these objectives, the treatment regimen shall require, include, or incorporate the following:

(1) - (5) (No change.)

(6) consideration of possible risks to workers, mixers, loaders, and applicators to ensure that occupational exposure [~~(via all routes)~~] to the pesticides does not cause adverse health effects;

(7) - (9) (No change.)

(10) cooperation with all agencies concerned including the United States Environmental Protection Agency, the Texas Parks and Wildlife Department, the Texas Department of Agriculture, and the Texas [~~Natural Resources Conservation~~] Commission on Environmental Quality, to furnish collected data and assist in further study of the fate, mobility, and persistence of pesticides and their metabolites in soil, water, and air, and assistance in establishing the strategies for their safe use and disposal.

(c) The foundation shall develop a long-term control plan that will describe the methods to be used in each eradication zone for the purpose of eradicating the cotton boll weevil. The plan must specify the procedures that will be used to minimize the effect of the use of pesticides [~~in long-term control plans~~]. In developing the procedures to be used for minimizing the effects of the use of pesticides, the plan must consider the potential impact of each pesticide used in the boll weevil eradication program [~~as conducted by the foundation~~] on the following parameters:

(1) - (7) (No change.)

(d) (No change.)

(e) In consideration of the analysis required by subsection (d) [~~(d)(1)~~] of this section, and notification requirements provided for in §3.23 of this chapter [~~title~~] (relating to Protection of Individuals, Livestock, Wildlife, and Honeybee Colonies), the foundation shall consider additional methods of notification, as appropriate for specific eradication zones.

(f) Subject to procedures established by subsection (a) of this section, the foundation shall only treat or cause to be treated cotton fields which meet or exceed the approved treatment thresholds, and shall only treat with the appropriate amounts [~~amount~~] of approved pesticides.

(g) (No change.)

(h) The foundation shall establish methods for verifying pesticide use reduction resulting from the boll weevil eradication program as conducted by the foundation. The foundation shall maintain an annual record of the total amount of each pesticide used in the eradication program in each eradication zone; [~~shall~~] conduct an evaluation [~~at the end of each year~~] of pesticide use in the boll weevil eradication program at the end of each year, and maintain the most recent date of use, when available. For other insecticides used, the foundation shall develop methods to assess insecticide use for other cotton pests.

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

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SUBCHAPTER C. PROHIBITION OF PLANTING OF COTTON

4 TAC §§3.51, 3.52, 3.54

The amendments are proposed pursuant to Section 74.118 of the Texas Agriculture Code (Code), which allows the Department to adopt rules regarding the areas where cotton may not be planted in eradication zones, and Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

The code affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.51. Definitions.

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

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

[~~(3) Department--The Texas Department of Agriculture.~~]

(3) [~~(4)~~] Eradication zone--A geographic area established under the Code, §74.1021, or a geographic area designated by the commissioner in accordance with the Code, §74.105, in which cotton growers by referendum approve their participation in a boll weevil or pink bollworm eradication program.

(4) [~~(5)~~] Foundation--The Texas Boll Weevil Eradication Foundation, Inc.

(5) [~~(6)~~] Noncommercial cotton--Any cotton that is not commercial cotton.

§3.52. Prohibition of Planting of Commercial and Noncommercial Cotton.

(a) Commercial cotton shall not be planted in any area within an eradication zone where, upon request of the foundation, the department has determined that the location of that cotton would jeopardize the success of the eradication program in that zone or present a hazard to public health and safety. Such an area shall be designated by the department as a prohibited planting area.

(b) In making a determination as to whether or not planting of commercial cotton shall be prohibited in an area, the department may consider the factors listed in §3.23 of this chapter [~~title~~] (relating to Protection of Individuals, Livestock, Wildlife, and Honeybee Colonies) and §3.24 of this chapter [~~title~~] (relating to Guidelines for Establishment of Foundation Rules, Procedures, and Methods of Treatment), and the recommendation of the foundation's [~~foundation~~] board.

(c) (No change.)

§3.54. Failure To Comply with Prohibition.

(a) Upon notice by the foundation that a grower has failed to comply with a notice of prohibition provided in accordance with §3.53 of this chapter [~~title~~] (relating to Notice of Prohibition), or has failed to obtain a permit for planting of noncommercial cotton in an eradication

zone as required by §3.52 [§3.52(c)] of this chapter [title] (relating to Prohibition of Planting of Commercial and Noncommercial Cotton) the department shall take the following actions:

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

(3) If the owner or grower cannot be located after reasonably diligent effort has been made by the department to locate such persons, the department shall publish the notice on the foundation's website [in a newspaper of general circulation in the county in which the land is located and post] for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation.

(4) (No change.)

(b) - (c) (No change.)

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SUBCHAPTER D. REQUIREMENTS FOR PARTICIPATION IN THE ERADICATION PROGRAM AND ADMINISTRATIVE PENALTY ENFORCEMENT

4 TAC §§3.71 - 3.76, 3.78

The amendments are proposed under Section 74.115 of the Texas Agriculture Code (Code), which allows the Department to assess administrative penalties for failure to pay eradication zone assessments when due; Section 74.116 of the Code, which requires the Department to adopt rules setting criteria for exemptions from payment of assessment penalties; Section 74.118 of the Code, which allows the Department to adopt rules requiring participation in eradication programs in established eradication zones and to assess penalties for failure to comply with Department rules on participation in cost sharing and acreage reporting; and Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

The code affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.71. Definitions.

The definitions contained in §3.51 of this chapter [title] (relating to Definitions) apply to this subchapter [are incorporated herein by reference].

§3.72. Requirements for Program Participation.

(a) (No change.)

(b) Participation in the eradication program includes:

(1) timely reporting to the foundation, as specified in subsections [subsection] (c) or (d) of this section, of all information regarding all commercial and noncommercial cotton and of all cotton grown for ornamental, research, or any other purposes as provided in the Code, §74.121;

(2) - (3) (No change.)

(c) Reporting deadlines.

(1) All acreage planted with cotton and the location of such acreage in an active eradication zone, regardless of which zone, must be reported annually to the foundation by the grower no later than the reporting date established for each county by the United States Department of Agriculture Farm Service Agency, as specified in the map found at paragraph (3) of this subsection.

(2) - (4) (No change.)

(d) - (e) (No change.)

§3.73. Notice of Requirement for Participation.

(a) After passage of a referendum establishing an eradication program and maximum assessment and/or upon adoption of any new requirements by the department and/or the foundation, a notice of the requirements to participate in the eradication program shall be published on the foundation's website for three consecutive weeks [by the foundation in a newspaper having general circulation within the affected zone or zones for one day each week for three successive weeks].

(b) The notice required by subsection (a) of this section shall include any requirements for timely reporting of acreage to the foundation, compliance with rules [regulations] of the department, and payment of the assessment established and approved for that zone.

§3.74. Penalties for Non-Payment [Non-payment] of Assessment and Failure To Timely Report Acreage.

(a) (No change.)

(b) Upon receiving notice from the foundation that a grower has failed to timely report to the foundation information regarding acreage and location of all commercial cotton fields and of noncommercial patches of cotton grown for ornamental, research, or other purposes as provided by §3.72(b)(1) of this chapter [title] (relating to Requirements [Requirement] for Program Participation), the department may assess an administrative penalty against the grower. A penalty assessed for failure to timely report acreage shall not exceed $50 per acre.

§3.75. Appeal of Penalty Assessment.

(a) The department shall issue a Notice of Violation to each person against whom the department has proposed to assess a penalty under §3.74 of this chapter [title] (relating to Penalties for Non-Payment [Non-payment] of Assessment and Failure To Timely Report Acreage). The Notice of Violation with attachments shall include a brief statement of the matters alleged, the amount of the recommended penalty, the date on which the penalty will be assessed, the dates and amounts of any penalty increases, in accordance with the department's penalty matrix, and the right of the person charged to request a hearing.

(b) A person against whom a penalty has been assessed may accept the determination of the department, including the recommended penalty, or may protest the determination and request a hearing. A notice of protest and request for hearing may be emailed to the department or mailed to [filed with the] Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(c) If the person accepts the determination of the department or fails to timely protest the determination as provided by subsection

(d) of this section, the commissioner shall issue an order approving the determination and ordering payment of the penalty.

(d) If the person protests the determination of the department and requests a hearing, [~~or fails to respond to the Notice of Violation,~~] a hearing on the matter shall be provided and conducted in accordance with the procedures provided for contested cases in the Texas Administrative Procedure Act, Government Code, Chapter 2001, Chapter 1 of this title (relating to General Procedures), and the State Office of Administrative Hearing's rules of procedures in Title 1, [~~1 TAC~~] Chapter 155 of the Texas Administrative Code (relating to Rules of Procedure [~~of the State Office of Administrative Hearings~~]). The request for a hearing must be made to the department not later than 20 days after the date of receipt of the Notice of Violation.

§3.76. Application for Exemption from Assessment Penalty.

(a) If an administrative penalty is assessed by the department under the Code, §74.115 [~~§76.115~~], for failure to timely pay an assessment, the cotton grower may apply for an exemption from that administrative penalty in writing on a form prescribed by the commissioner within 20 days from receipt of the notice of violation, stating the conditions justifying such request. The conditions must be such that payment of the penalty would impose an undue financial burden upon the grower.

(b) A grower who applies for an exemption from the penalty under this section must use a form prescribed by the commissioner. Forms may be obtained by emailing the department or mailing the department at [~~contacting the~~] Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Exemptions apply only to the particular crop year for which they are sought. A cotton grower must file a new [~~separate~~] application for an exemption with the department for each new crop and associated crop year for which an exemption is sought [~~claimed~~].

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

§3.78. Application for Payment Plan for Assessment Penalty.

A cotton grower, who applies for an exemption from assessment penalties under §3.76 of this chapter [~~title~~] (relating to Application for Exemption from Assessment Penalty), may apply with the department, using a form prescribed by the commissioner, for permission to establish a payment plan for the assessment penalty. Forms may be obtained by contacting the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A separate application must be made for each year in which a payment plan is requested.

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SUBCHAPTER E. CREATION OF ERADICATION ZONES

4 TAC §§3.100, 3.102, 3.103

The amendments are proposed pursuant to Section 74.120 of the Texas Agriculture Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

The code affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.100. Authority and Purpose.

The Texas Agriculture Code, §74.1042, provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed eradication zone as long as the area is not within a statutory eradication zone that has approved an eradication program by referendum. Senate Bill 1814, 75th R.S. ch. 463, §1.27(d) (SB 1814, §1.27(d)), provides the commissioner [~~of agriculture~~] with the authority, by rule, to divide a statutory eradication zone, after solicitation and consideration of public opinion and to fairly apportion any debt to each portion of an eradication [~~a~~] zone divided by rule in accordance with SB 1814, §1.27(d).

§3.102. Eradication Zone Activation; Grower Approval.

(a) Once an eradication zone has been designated by adoption of a rule under the Texas Agriculture Code (Code), §74.1042, the eradication zone is not established until approved by a referendum of cotton growers in the new eradication zone held in accordance with the [~~Texas Agriculture~~] Code, §74.105.

(b) If the commissioner divides a statutory eradication zone by adoption of a rule under SB 1814, §1.27, the commissioner may hold a referendum in the new zone.

(c) Once an eradication zone has been designated by rule and established by approval of cotton growers in the eradication zone, as provided in subsections (a) and (b) of this section, the eradication zone shall operate in accordance with the provisions of the [~~Texas Agriculture~~] Code, Chapter 74, Subchapter D, and rules adopted thereunder.

§3.103. Apportioning of Debt.

Once a statutory zone has been divided by rule of the commissioner, in accordance with SB 1814, §1.27(d), and approved by growers as provided in §3.102(b) of this chapter [~~title~~] (relating to Eradication Zone Activation, Grower Approval), the commissioner may fairly apportion any debt to each portion of the divided eradication zone.

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SUBCHAPTER F. GENERAL PROCEDURES

4 TAC §§3.201 - 3.203, 3.205

The amendments are proposed pursuant to Section 74.120 of the Texas Agriculture Code (Code), which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74; Section 74.152 of the Code, which requires the Department

to adopt rules to implement a cost-sharing program as part of the eradication program, and Section 74.1095 of the Code, which requires the Department to establish by rule procedures for the informal review and resolution of claims arising out of certain acts of the Foundation.

The code affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.201. Approval by the Commissioner of Agriculture.

The Texas Boll Weevil Eradication Foundation (foundation) is required to obtain approval from the commissioner of agriculture as follows.

(1) Approval must be obtained in writing from the commissioner for the borrowing of money to fund operations of the foundation.

(A) An approval request for the borrowing of money must first be approved by the foundation's board in open meeting.

(B) (No change.)

(2) The commissioner must approve in writing the foundation's policy for the procurement of goods or [~~and/or~~] services.

(A) (No change.)

(B) The general procurement policy of the foundation shall include:

(i) a requirement in regards to purchases of goods or services:

(I) that [~~all purchase and/or lease~~] agreements over the amount of $50,000 [~~$10,000~~] entered into for [~~the~~] providing aerial application services [~~of goods and/or services of aerial applicators~~], purchases of chemicals, pheromone traps, pheromone, stakes, bar code devices, and purchases or leases of vehicles or other heavy equipment be approved by the commissioner; and

(II) (No change.)

(ii) provisions for obtaining of competitive bids, including a requirement that bid announcements [~~(request for bids)~~] for purchases or [~~and/or~~] leases, or financing of such purchases or [~~and/or~~] leases, over the amount of $50,000 [~~$10,000~~] be approved by the commissioner prior to distribution of the announcement [~~(request for bids)~~] to prospective bidders; and

(iii) a requirement that a statement of justification of the need for the goods or services being purchased or [~~and/or~~] leases be provided for each purchase or [~~and/or~~] lease.

(3) The commissioner must review and approve the foundation's operating budget, which includes individual zone budgets as well as the foundation's operating budget for its main administrative offices, in writing, and no funds may be used to fund programs not approved by the commissioner. The budget must:

(A) - (C) (No change.)

(D) include the following:

(i) a breakdown of expenses to show the budget as projected by eradication zone;

(ii) - (iii) (No change.)

(E) (No change.)

(4) (No change.)

(5) The commissioner must approve in writing or by signing cooperative agreements entered into by the foundation for carrying out the purposes of approved eradication activities:

(A) (No change.)

(B) with individuals, or a group of persons involved in similar programs to carry out the purposes of the Texas Agriculture Code, Chapter 74, Subchapter D; and

(C) (No change.)

§3.202. Reporting Requirements.

(a) The Texas Boll Weevil Eradication Foundation (foundation) [~~foundation~~] shall provide the department with a copy of its annual audit within 30 days of the audit's completion. Included with the audit shall be any accompanying letters to management from the auditor.

(b) The foundation shall file with the department an annual report within 45 days of the end of its preceding fiscal year. The annual report shall include, at a minimum:

(1) a balance sheet of assets, liabilities, and fund equity;

(2) (No change.)

(3) a statement of eradication activities carried out in the year covered by the report, by eradication zone;

(4) information regarding the name and quantity of pesticides used in the program by eradication zone; and

(5) copies of any resolutions adopted by the foundation's board regarding the eradication program.

§3.203. Cost-sharing Program.

(a) Statement of Purpose and Authority. In accordance with the Texas Agriculture Code (Code), Chapter 74, Subchapter E, the department is authorized to contract with the Texas Boll Weevil Eradication Foundation (foundation) [~~entity named under §74.1011~~] to carry out boll weevil eradication to obtain boll weevil eradication services for the state of Texas as part of a cost-sharing program. [~~The Texas Boll Weevil Eradication Foundation, Inc. (the foundation) has been designated as that entity.~~] This section sets forth requirements and procedures for the implementation of the cost-sharing program.

(b) Eradication zone [~~Zone~~] eligibility.

(1) (No change.)

(2) An eradication [~~A~~] zone meets the requirement set forth in subparagraph (1)(A) of this section if a referendum of cotton growers has been held in the zone in accordance with the Code, Chapter 74, Subchapter D, and both the establishment of an eradication program and a maximum assessment have been approved by growers for that zone.

(c) Request for funding.

(1) (No change.)

(2) A proposal to provide boll weevil eradication services shall include:

(A) (No change.)

(B) a statement verifying that the foundation will comply with the Texas Grant Management Standards [~~Uniform Grant Management Standards~~] promulgated by the Texas Comptroller of Public Accounts [~~Governor's Office of Budget and Planning~~], under the Texas Government Code, Chapter 783 [~~(UGMS)~~];

(C) - (D) (No change.)

(3) (No change.)

(d) (No change.)

(e) Reporting/Accounting Requirements.

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

(3) The foundation shall establish an accounting system which identifies source of funds for cost-sharing programs, with separate accounting, in a manner that will enable the department and others to audit funds and verify source of funds and how they are used, for:

(A) - (C) (No change.)

(4) (No change.)

(5) The department may suspend disbursement of funds to the foundation, if:

(A) (No change.)

(B) the department determines, or has reason to believe, that the use of the appropriated funds by the foundation is not consistent with state law; or [~~and/or~~]

(C) (No change.)

§3.205. Administrative Review.

(a) Filing of request.

(1) Any person who believes they have been aggrieved in connection with an action of the Texas Boll Weevil Eradication Foundation (the foundation) may file a request for administrative review by the department [~~Texas Department of Agriculture (the department)~~] under the Texas Agriculture Code, §74.1095 [~~(§74.1095)~~].

(2) A request must be in writing and received by the department within 90 days after the action that forms the basis of the complaint [~~of which the person is complaining occurred~~]. Formal requests must comply with the following requirements, and shall be resolved in accordance with the procedure set forth below. Copies of the request and any supporting documentation must be mailed or delivered by the requesting party to the department and the foundation.

(b) (No change.)

(c) Informal Review.

(1) (No change.)

(2) The General Counsel, or General Counsel's [~~his or her~~] designee, shall have the authority, prior to appeal to the commissioner or commissioner's [~~her~~] designee, to settle and resolve the complaint that is the subject of the request, and may solicit additional information regarding the matters alleged in the request for review from the requester, the foundation, or any other relevant party. Copies of any additional information received shall be provided to both the requester and the foundation.

(3) If the issues raised in the request are not resolved by mutual agreement, the General Counsel will issue a written determination on the request for review as follows.

(A) If the General Counsel determines that no violation of rules or statutes has occurred, the General Counsel [~~he or she~~] shall so inform the requesting party and the foundation by letter, setting forth the reasons for the determination.

(B) If the General Counsel determines that a violation of the rules or statutes has occurred, the General Counsel [~~he or she~~] shall so inform the requesting party and the foundation by letter, setting forth the reasons for the determination and the appropriate remedial action.

(4) (No change.)

(d) Appeal to Commissioner.

(1) The General Counsel's determination on a complaint may be appealed to the commissioner [~~Commissioner~~] by the requester, or the commissioner's [~~his or her~~] designee, or the foundation [~~Foundation~~]. An appeal of the General Counsel's determination must be in writing and must be received by the department no later than 15 days after the date of the General Counsel's determination. The appeal shall include specific reasons why the requester or the foundation [~~Foundation~~] disagrees with the General Counsel's determination. Copies of the appeal must be mailed or delivered by the party appealing to the other party.

(2) The commissioner [~~Commissioner~~], or the commissioner's [~~his or her~~] designee, shall review the request, any supporting documentation, the General Counsel's determination, and the appeal and issue a determination on the request. The appeal shall be limited to review of the General Counsel's determination and documentation presented by parties in support of their positions.

(3) The commissioner's [~~Commissioner's~~] determination of the appeal shall be the final administrative action of the agency and is subject to judicial review under Chapter 2001 of the Texas[~~,~~] Government Code.

(e) Actions Subject to Review.

(1) A request for review [~~Request for Review~~] filed under the Code, §74.1095, shall be based on actions taken by the foundation under the [~~Texas Agriculture~~] Code, Chapter 74, Subchapter D.

(2) Actions subject to review under the Code, §74.1095, do not include:

(A) alleged violations that may be prosecuted administratively by the department under the [~~Texas Agriculture~~] Code, §12.020 [~~and/or §76.1555~~];

(B) - (C) (No change.)

(f) Appropriate remedial actions. If the department, or the commissioner [~~Commissioner~~] on appeal, determines that the foundation acted in a manner that warrants action by the department, the department may prescribe corrective action to be carried out by the foundation, or refer its determination to the appropriate entity in accordance with the [~~Texas Agriculture~~] Code, §74.126. The department is not authorized to award monetary damages to a person filing a request under this section.

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SUBCHAPTER H. USE OF BIO-INTENSIVE CONTROLS IN ACTIVE BOLL WEEVIL ERADICATION ZONES

4 TAC §§3.400 - 3.403

The amendments are proposed pursuant to Section 74.130 of the Texas Agriculture Code (Code), which requires the Department to develop and adopt rules to allow cotton growers in eradication programs to use biological, botanical, or other non-synthetic pest control methods, and Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

The code affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.400. Definitions.

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

(1) Bio-intensive control--The use of biologically based pest control tactics, rather than traditional chemical control methods. Biologically based pest control tactics include biological controls, resistant host plants, cultural controls, botanical insecticides, or sterile insect techniques that cause little or no detrimental effect on non-target organisms.

~~[(2) Department--Texas Department of Agriculture.]~~

(2) [~~(3)~~] Foundation--Texas Boll Weevil Eradication Foundation, Inc.

(3) [~~(4)~~] Work unit--That area of cotton within a boll weevil eradication zone overseen by a Foundation Field Unit Supervisor.

§3.401. Request for Approval To Use Bio-intensive Control Method(s).

(a) Any cotton producer who wishes to use a bio-intensive control method in an active boll weevil eradication zone shall request approval in writing from the foundation [~~Foundation~~] at least 90 days prior to traditional cotton planting dates in the area in which the grower [~~he~~] farms. Exceptions are:

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

(b) The request shall be considered by the foundation [~~Foundation~~] and shall be granted or denied in writing at least 30 days prior to traditional planting time, and if approved, certification issued designating the time period for which the approval is valid.

(c) In the request for use of bio-intensive controls, the grower must state:

(1) - (6) (No change.)

(7) the plan for coordinating the monitoring methods between the foundation [~~Foundation~~] and the grower;

(8) (No change.)

(9) other pertinent information the grower wishes to be used in determining approval for the use of bio-intensive [~~alternative~~] controls.

(d) In making its decision to grant approval for bio-intensive control methods in an active boll weevil eradication program, the foundation [~~Foundation~~] shall consider:

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

(5) the recommendation from the foundation's [~~Foundation~~] technical committee.

(e) If a bio-intensive control method is approved by the foundation [~~Foundation~~] in accordance with subsection (b) of this section, the grower shall document treatment dates and outcomes, and make the records available to the foundation [~~Foundation~~] at a pre-determined time, and stay in weekly contact with the foundation's [~~Foundation's~~] Field Unit Supervisor for the grower's [~~his~~] area to provide [~~for~~] updates on boll weevil numbers trapped and area boll weevil infestation counts.

(f) If the foundation [~~Foundation~~] disapproves the request to use bio-intensive control methods in accordance with subsection (b) of this section, the grower may appeal the decision in writing, within 10 days of receipt of the notification of disapproval, to the department [~~Department~~] and furnish any additional information the grower wants considered. The department [~~Department~~] shall determine whether the foundation [~~Foundation~~] complied with this subchapter in making its decision and rule on the appeal within 15 days of the receipt of the grower's filing of an appeal. This process must be completed prior to traditional planting dates.

§3.402. Treatment of Fields Approved for Use of Alternate Control Methods.

The foundation [~~Foundation~~] shall not treat with its regular regimen of chemical applications fields for which a grower has been approved to use alternative control methods.

§3.403. Withdrawal of Approval To Use Bio-intensive Control Methods.

(a) Fields meeting foundation [~~Foundation~~] pest thresholds, and approved for bio-intensive control methods, must be treated within 48 hours of the foundation's [~~Foundation's~~] notification to the grower or the grower's [~~his~~] designee, or the foundation [~~Foundation~~] will withdraw approval in writing.

(b) If boll weevil numbers in traps or field infestations monitored by the foundation [~~Foundation~~] in the field(s) approved for bio-intensive control methods exceed those in a majority of fields within the foundation's [~~Foundation's~~] work unit by 25% for any period of time during mid-season spraying, the foundation [~~Foundation~~] shall notify the grower of this event.

(c) If, after discussion between the grower and the foundation [~~Foundation~~], no other alternative bio-intensive control method is available, the grower's approval to use a bio-intensive control method shall be withdrawn by the foundation [~~Foundation~~] and notice of withdrawal provided to the grower in writing.

(d) A grower may appeal the withdrawal of the certification to the department [~~Department~~] within five [~~5~~] days of receipt of the notice of withdrawal. The grower shall provide a notice of the appeal to the foundation [~~Foundation~~]. The foundation [~~Foundation~~] shall not treat the grower's field while the department [~~TDA~~] reviews the appeal. In making its decision on the appeal, the department [~~Department~~] shall consider the impact the decision will have on the overall success of the eradication program in the zone.

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

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Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 936-9360

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SUBCHAPTER J. ORGANIC COTTON RULES

4 TAC §§3.601, 3.602, 3.604 - 3.609

The amendments are proposed pursuant to Section 74.120 of the Texas Agriculture Code (Code), which allows the Department to adopt rules necessary to administer the purposes of Chapter 74, and Section 74.125 of the Code, which requires the Department to adopt rules and procedures to protect the eligibility of Department-certified organic cotton growers, to ensure that organic and transitional certification meets national certification standards, to maintain the effectiveness of the eradication program, and to provide indemnity for organic cotton growers for reasonable losses resulting from production prohibitions or required destruction.

The code affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.601. Definitions.

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

(1) (No change.)

(2) Certified organic crop--A crop which has undergone independent third-party [~~third party~~] verification by the department or a registered private certifying agent that the crop has been produced in compliance with the Texas Organic Standards, Chapter 18 of this title (relating to Organic Standards and Certification), and qualified for full organic status, including the requirement that the land on which the crop is grown has had no prohibited substances [~~materials~~] applied for at least 36 months prior to harvest[~~, except for a treatment made under the emergency pest or disease treatment program provisions in Chapter 18 of this title (relating to Organic Standards and Certification)~~].

[~~(3) Commissioner--The Commissioner of Agriculture or her designee.~~]

[~~(4) Department--The Texas Department of Agriculture~~]

(3) [~~(5)~~] Foundation--The Texas Boll Weevil Eradication Foundation, Inc.

(4) [~~(6)~~] Plow-up--To shred or plow in a manner which destroys all hostable plants.

(5) [~~(7)~~] Transitional crop--A crop which has undergone independent third-party [~~third party~~] verification by the department or a registered private certifying agent that the crop has been produced on land in compliance with the transitional certification requirements in §18.300 of this title (relating to Transitional Certification Requirements) [~~Texas Organic Standards, Chapter 18 of this title, and fulfills all requirements except the 36 months required for full organic status. A certified transitional organic crop must be produced on land that has had no prohibited materials applied for at least 12 months prior to harvest, except for a treatment made under the emergency pest or disease treatment program provisions found in Chapter 18 of this title~~].

(6) [~~(8)~~] Trap count--The number of boll weevils recorded as captured in a pheromone trap as inspected on a routine basis by an employee of the foundation.

(7) [~~(9)~~] Trigger levels--Standards established by the foundation for the number of weevils recorded in a trap or for the number of boll weevils trapped per acre that would initiate further action by the foundation.

§3.602. Planting of Certified Organic or Transitional Cotton in Active Eradication Zones.

The decision on whether to plant certified organic or transitional cotton in any field located in an active eradication zone will be made solely by the grower producing the crop, subject to any designations of prohibited growing areas under the Code, §74.118, and rules adopted thereunder. Neither the foundation nor the department will urge or persuade, in any way, a grower [~~or growers~~] to plant or not to plant certified organic or transitional cotton. This provision shall not affect the rights of the parties to negotiate in good faith pursuant to §3.607 [~~3.607~~] of this chapter [~~title~~] (relating to Eligibility for Indemnification).

§3.604. Protection of Organic Certification.

(a) (No change.)

(b) In the event the foundation or an employee or independent contractor of the foundation inadvertently treats a certified organic or transitional field or portion of a crop, either directly or through drift, with prohibited materials, [~~other than an application allowed under emergency pest or disease treatment program provisions of Chapter 18 of this title (relating to Organic Standards and Certification),~~] the foundation will, to the extent appropriate, assist the grower in obtaining just and reasonable compensation.

(c) - (d) (No change.)

§3.605. Trigger Levels.

(a) During the first season of treatment in an active boll weevil eradication zone, the "diapause" phase of the program, all organic producers may plant certified organic or transitional cotton consistent with §3.602 of this chapter [~~title~~] (relating to Planting of Certified Organic or Transitional Cotton in Active Eradication Zones), without regard to boll weevil trap captures. Producers will be required to communicate with the foundation as prescribed in §3.603 of this chapter [~~title~~] (relating to Communication with Organic Producers; Notification of Organic Production).

(b) Certified organic or transitional cotton fields in active boll weevil eradication zones will adhere to the same trap count trigger levels that are set by the foundation and pursuant to subsection (c) of this section for conventional cotton fields in that zone beginning in the first season-long phase of the program and continuing each season thereafter.

(c) (No change.)

(d) If an organic or transitional field surpasses the set trap count trigger level, a technical review committee will determine if destruction of that field or other alternative action should be required using the following procedures.

(1) This committee will consist of the foundation program director or [~~his~~] designee, a member of the foundation's technical advisory committee appointed by the commissioner, and a department representative designated by the Commissioner.

(2) - (5) (No change.)

(6) Should the commissioner determine that some type of eradication activity should occur, the grower may elect to either destroy the crop as prescribed in §3.606 of this chapter [~~title~~] (relating to Crop Destruction; Extensions)[~~, or may elect to allow the crop to be treated under the emergency pest or disease treatment program provisions of Chapter 18 of this title (relating to Organic Standards and Certification)~~].

(e) (No change.)

§3.606. Crop Destruction; Extensions[~~: Choice of Conventional Treatment~~].

(a) Crop destruction. A grower who has been notified that destruction of the grower's [~~their~~] organic cotton crop is necessary will have no more than seven calendar days from the date of receipt of notification to destroy that crop by plow-up.

(b) Extension requests. A request for a deadline extension will be handled as follows.

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

(5) All requests for extensions shall be postmarked on or prior to the destruction deadline.

(c) Penalties for not destroying a crop by the deadline.

(1) If the crop is not destroyed within seven calendar days of the date of notification or expiration of an approved extension, the compensation the grower is entitled to under §3.608 of this chapter [~~title~~] (relating to Calculation of Indemnity or Compensation), for that acreage will be decreased by 50%.

(2) If the crop is not destroyed within 14 calendar days of the date of notification or expiration of an approved extension, the grower will no longer be entitled to compensation under §3.608 of this chapter [~~title~~], for that acreage.

(3) - (4) (No change.)

~~[(d) Choosing conventional treatment.]~~

~~[(1) In lieu of crop destruction, a grower who qualifies under the emergency pest and disease treatment program provisions of Chapter 18 of this title may notify the foundation and the department in writing that he or she desires conventional treatment within three days of receiving notice that the field must be treated or destroyed. Under Chapter 18 of this title, any harvested crop or plant part to be harvested that has been treated cannot be sold, labeled, or represented as Organically Produced or Transitional-Organic Certification Pending; this treatment will not affect the certification status of the operation or future crops.]~~

~~[(2) Such notification must be provided in writing to both the foundation and the department and must be postmarked, if sent by mail, or faxed at least four days before the destruction deadline.]~~

~~[(3) Once notified, the foundation shall approve or deny in writing, to the grower and the department, the request for conventional treatment within 48 hours. If the request is approved, the foundation may treat the crop with conventional methods. Should the request be denied, the grower, or if the grower refuses, the department or its designee, must destroy the crop as outlined in subsections (a) and (c) of this section.]~~

~~[(4) Once the foundation has approved the grower's request for conventional treatment, the Foundation will treat the field in the same manner as all conventional cotton fields in the same zone.]~~

~~[(5) A grower whose cotton is approved for treatment by the foundation and is treated under Chapter 18 of this title, will be entitled to compensation under §3.608, subsection (h), of this title (relating to Calculation of Indemnity or Compensation), for that acreage.]~~

§3.607. Eligibility for Indemnification.

(a) Certified organic and/or transitional cotton growers in active eradication zones may negotiate and enter into voluntary indemnification agreements with the foundation [~~Foundation~~] provided that those agreements are negotiated and made in good faith by both parties and are approved by the commissioner.

(b) (No change.)

(c) Certified organic and/or transitional cotton growers in boll weevil eradication zones which become active after the effective date of this subchapter will be eligible for compensation under the following conditions.

(1) (No change.)

(2) The grower's base acreage will be based on the grower's [~~growers~~] choice of one of the following:

(A) - (B) (No change.)

(d) Any grower eligible for indemnification under subsections (b) or (c) of this section may, upon approval of the commissioner [~~Commissioner~~], transfer eligible base acreage to another grower and thereby transfer to the new grower eligibility for indemnification for cotton grown on that acreage for the purposes of this chapter, provided that organic certification requirements found at Chapter 18 of this title (relating to Organic Standards and Certification) are met by the new grower.

§3.608. Calculation of Indemnity or Compensation.

(a) To be eligible for indemnification if a crop must be destroyed under §3.606 of this chapter [~~title~~] (relating to Crop Destruction; Extensions[~~; Choice of Conventional Treatment~~]), a grower must report the United States Department of Agriculture (USDA) Farm Service Agency farm numbers, physical locations, and row acreage on each farm that the grower will use as the base acreage calculated in §3.607 of this chapter [~~title~~] (relating to Eligibility for Indemnification [~~or Compensation~~])[~~,~~] to the foundation before planting each year on a form provided by the foundation.

(b) If certified organic or transitional cotton on the grower's base acreage is destroyed through the requirements of this subchapter, any indemnification will be made within 30 days of verification of actual destruction[~~, or if the acreage is treated by the foundation under emergency pest or disease treatment program provisions as provided under Chapter 18 of this title (relating to Organic Standards and Certification), any compensation will be made within 30 days of receipt by the foundation of gin receipts for the acreage affected~~].

(c) (No change.)

(d) The following factors will be considered when calculating indemnity payments for organic cotton growers whose cotton is required to be destroyed in accordance with §3.605 of this chapter [~~title~~] (relating to Trigger Levels) and §3.606 of this chapter [~~title~~] (relating to Crop Destruction; Extensions[~~; Choice of Conventional Treatment~~]):

(1) eligible acreage - the base acreage, in row acres planted to certified organic or transitional cotton, determined as provided in §3.607 of this chapter [~~title~~] (relating to Eligibility for Indemnification), and identified for that field as described in this section. Organic or transitional cotton must be planted on this acreage by the final planting date set by the USDA Risk Management Agency [~~of the United States Department of Agriculture~~] in the county in which the crop is planted.

(2) yield - the yield per acre will be determined by using the Actual Production History (APH) per row acre planted to cotton for that farm, as determined by the USDA Risk Management Agency [~~of the United States Department of Agriculture~~]; and

(3) conventional cotton price - the conventional cotton price will be determined by the upland cotton price election for an APH policy in the county in which the organic or transitional cotton in question lies for the current crop year. This price for the coming crop year is published by the USDA Risk Management Agency [~~of the United States Department of Agriculture~~] before December 31 of each year.

(e) When a grower is entitled to indemnification as a result of crop destruction, the foundation will indemnify the grower in accordance with the following formulas:

(1) If the notice is received by the grower less than 30 [~~thirty~~] days after the final planting date in that county that destruction of a crop is required, the indemnity will be: eligible acreage x yield

x (conventional cotton price + $0.39) x [X] 50%, with no mitigation required; or

(2) If the notice is received by the grower 30 [thirty] days or more after the final planting date in that county that destruction of a crop is required, the indemnity will be: eligible acreage x yield x (conventional cotton price + $0.39) x [X] 65%, with no mitigation required.

(3) For purposes of this subsection, notice is deemed received by the grower:

(A) (No change.)

(B) if mailed by certified mail, return receipt requested, upon the date of delivery as shown on the [green card] receipt;[,] if no delivery date is shown, three days after the date the department deposits the notice in the mail as shown by department records or other competent evidence; or

(C) if mailed by regular mail, and upon showing of proof by the department that the notice was deposited in the [U.S.] mail and sent to grower's last known mailing address, three [after 3] days after [from] date of mailing.

(f) After a zone has been declared eradicated by the commissioner:

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

(3) indemnification will be acreage x yield x (conventional cotton price + $0.39) x [X] 75%, with no mitigation required.

(g) (No change.)

[(h) If a field is treated under §3.606(d) of this title (relating to Crop Destruction; Extensions; Choice of Conventional Treatment) by conventional means the foundation will compensate the grower at a rate of $0.39 per pound of lint harvested from that field that crop year.]

§3.609. Payment of Assessment.

(a) Organic growers who plant certified organic or transitional cotton will be required to pay an assessment in accordance with the Code, Chapter 74, Subchapter D, and rules adopted thereunder. This assessment will be in the amount set for the entire zone and will be billed in the same manner as all cotton grown in the zone.

(b) Agreements negotiated under §3.607 of this chapter [title] (relating to Eligibility for Indemnification) may include provisions for payment of an assessment or reduction of payment to an organic grower in the amount of an assessment for that acreage.

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

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CHAPTER 7. PESTICIDES

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Part 1, Chapter 7 (Pesticides), Subchapter A (General), §7.1; Subchapter B (Registration), §§7.10, 7.12, and 7.14; Subchapter C (Licensing), §§7.20 - 7.26; Subchapter D (Use and Application), §§7.30 - 7.33, 7.36, 7.37, 7.39, and 7.40; Subchapter E (Regulated Herbicides), §§7.50 - 7.53; Subchapter F (Enforcement), §7.60; and Subchapter G (Penalties) §7.70 and §7.71.

With the exception of proposed amendments to §7.53, the Department identified the need for the proposed amendments during its rule review of 4 Texas Administrative Code, Chapter 7, Subchapter A - G, conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendment to §7.53 pertaining to changes to the area where regulated herbicides can be applied in Brazos County arises from a request from the Brazos County Judge to the Department in November 2021. In the request, the County Judge notified the Department that the Brazos County Commissioner's Court passed an amendment to make these changes.

The proposed amendments to §7.1 update a reference to Chapter 76 of the Texas Agriculture Code (Code), remove unnecessary and outdated definitions for the "Federal Aviation Administration" and "nurseryman," add definitions for "livestock" and "worker protection standard" due to their frequency throughout this chapter, and revise unclear language for the definition of "purchase."

The proposed amendments to §7.10 update a reference to Chapter 76, Subchapter C of the Code and make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.12 update a reference to Chapter 76, Subchapter D of the Code.

The proposed amendments to §7.14 correct a reference to an experimental use permit number and remove a subsection outlining registration fees for pesticides having experimental use permits because such fees are no longer applicable to these pesticides.

The proposed amendments to §7.20 clarify language outlining licensing time periods and make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.21 modify references to restricted-use and state-limited-use pesticides to conform with references in Chapter 76 of the Code; replace references to Code, Chapter 76 with "the Act", the Environmental Protection Agency with "EPA", and Texas A&M AgriLife Extension with "Extension" as defined in §7.1; revise all references to the vertebrate pest control and soil fumigation categories to "vertebrate pest" and "soil fumigation" for consistency with the categories established in the rule; correct a reference to the Americans with Disabilities Act, as amended; and make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.23 replace a reference to Code, Chapter 76 with "the Act" as defined in §7.1 and remove unnecessary language.

The proposed amendments to §7.24 make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.25 change a reference to the Environmental Protection Agency to "EPA" as defined in §7.1 and make a grammatical change to improve the rule's readability.

The proposed amendments to §7.26 change a reference to the Environmental Protection Agency to "EPA" as defined in §7.1 and updated a reference to the United States Code.

The proposed amendments to §7.30 revise references to "state-limited-use" to conform with references in Chapter 76 of the Code; replace a reference to Code, Chapter 76 with "the Act" as defined in §7.1; combine nearly-identical requirements for purchasing and using state-limited-use pesticides into one subparagraph, add a reference to §7.21 to clarify the rule's content; update references to the Department to conform with usage throughout Title 4, Part 1; remove unnecessary language about the definition of "public health control;" and make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.31 replace references to Code, Chapter 76 with "the Act" as defined in §7.1 and make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.32 make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.33 update a reference to §7.31 and make a grammatical change to improve the rule's readability.

The proposed amendments to §7.36 add a reference to the federal Worker Protection Standard (WPS) to specify the type of training requirements addressed in this rule and update requirements for those who conduct WPS training to reflect the Department's current policy of maintaining class rosters for WPS training verification purposes.

The proposed amendments to §7.37 add a reference to §7.36 to clarify the rule's content, clarify pesticide application requirements by including a specific timeframe, remove redundant and unnecessary language, and make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.39 remove unnecessary language, update references to rules in this chapter, and make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.40 make supervision requirements pertaining to the use of M-44 sodium cyanide devices by noncertified applicators the same for commercial and noncommercial applicators, update a reference to Chapter 76, Subchapter D of the Code, remove unnecessary language, and make grammatical and editorial changes to language to improve the rule's readability.

The proposed amendments to §7.50 update an exemption for applications of regulated herbicides requiring a permit by those licensed in the Weed Control category by the Texas Structural Pest Control Service.

The proposed amendments to §7.51 replaces a reference to Code, Chapter 76 with "the Act" as defined in §7.1.

The proposed amendment to §7.52 makes a grammatical change to improve the rule's readability.

The proposed amendments to §7.53 change the regulated area of Brazos County pertaining to the application of regulated herbicide in response to a request from Brazos County to revise this area. This request followed an amendment passed by the Brazos County Commissioner's Court to change this area.

The proposed amendments to §7.60 update language to encompass all individuals, including business entities, regulated under Chapter 76 of the Code and this chapter and make grammatical changes to improve the rule's readability.

The proposed amendment to §7.70 updates a reference to Chapter 76, Subchapter D of the Code.

The proposed amendments to §7.71 designate the first and last paragraphs of the rule as subsections (a) and (b) in order to distinguish between labeling violations and other violations, modifies a reference to special local need registration for consistency with usage in Chapter 76 of the Code, and make grammatical changes to improve the rule's readability.

Additionally, throughout this chapter, internal references are corrected as necessary to clarify and enhance the readability of this chapter.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Perry Cervantes, Director of Environmental and Biosecurity Programs, has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Cervantes provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years these rules y will be in effect:

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

(2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;

(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Department;

(4) the proposed amendments will not require an increase or decrease in fees paid to the Department;

(5) the proposed amendments do not create a new regulation;

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

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Cervantes has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering them.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Cervantes has further determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be increased consumer protection through the improved readability and clarity of the rules. In addition, Mr. Cervantes has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no cost to persons who are required to comply with the proposed amendments.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

Written comments on the proposed rule amendments may be submitted by mail to Mr. Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to morris.karam@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL

4 TAC §7.1

The amendments are proposed pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 76.

§7.1. Definitions.

In addition to the definitions set out in the Code, §76.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Texas Agriculture Code, Chapter 76[~~, entitled Texas Pesticide and Herbicide Regulation~~].

(2) - (10) (No change.)

[~~(11) FAA--Federal Aviation Administration.~~]

(11) [~~(12)~~] Farm labor camp--Housing used by one or more seasonal, temporary, permanent, or migrant workers and accompanying dependents which are owned, operated, or managed by the farm operator or licensed by the State of Texas.

(12) [~~(13)~~] Farm operator--The person responsible for the overall control and management of the crop.

(13) [~~(14)~~] Formulation--A mixture of active and inert ingredients prepared for use as a pesticide for practical use.

(14) Livestock--Cattle, horses, mules, asses, sheep, goats, llamas, alpacas, exotic livestock, and hogs, unless otherwise defined.

[~~(15) Nurseryman--A person who possesses a current Class 1, 2, 3, or~~ 4 ~~nursery and floral certificate issued by the department.~~]

(15) [~~(16)~~] Person--Includes any individual, partnership, association, corporation, company, joint stock association, governmental subdivision, public or private organization of any character, body politic or any organized group of persons, whether incorporated or not,[~~;~~] including any trustee, receiver, assignee, or similar representative thereof.

(16) [~~(17)~~] Purchase--A transaction entailing payment for a pesticide, and delivery and/or physical possession of the pesticide to or by a licensed person or a person under the direct supervision of a licensed person [~~For purposes of this chapter, the term purchase does not prohibit a transaction in which the unlicensed person merely provides payment for the pesticide, but actual delivery or physical possession of the pesticide is made to and remains with a properly licensed person or a person under the direct supervision of a properly licensed person~~].

(17) [~~(18)~~] Regulated herbicide--A herbicide product containing an active ingredient classified as a regulated herbicide by §7.30 of this chapter [~~title~~] (relating to Classification of Pesticides).

(18) [~~(19)~~] State-limited-use pesticide--Any pesticide product containing an active ingredient classified as a state-limited-use pesticide by §7.30 of this chapter [~~title~~] (relating to Classification of Pesticides).

(19) [~~(20)~~] Trained trainer--Anyone who has completed an EPA-approved WPS train-the-trainer program or a WPS-trained handler who may train workers only.

(20) [~~(21)~~] Volatility--The tendency of a substance to change from a liquid or solid to a gaseous state. It is the movement of a pesticide in a gaseous state in the air from surface water, soil, or vegetation.

(21) Worker Protection Standard (WPS)--The federal worker protection standard as found in the Code of Federal Regulations, 40 C.F.R. Part 170.

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

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Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
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SUBCHAPTER B. REGISTRATION

4 TAC §§7.10, 7.12, 7.14

The amendments are proposed pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code; Section 76.043, which requires the Department to adopt a system through which pesticide registrations expire on dates other than the second anniversaries of their approvals or renewals; and Section 76.047 of the Code, which allows the Department to issue experimental use permits for pesticides, to supervise the use of pesticides under these permits, and to charge fees for issuing these permits.

The code affected by the proposal is Texas Agriculture Code, Chapter 76.

§7.10. Registration of Pesticides.

(a) In addition to the requirements contained in the Act, Subchapter C (concerning Registration [~~registration~~]), the application for registration shall include:

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

(4) A fee of $600 per product registered for a two-year [~~two year~~] period. This fee may be prorated in accordance with subsection (f) of this section.

(b) - (e) (No change.)

(f) All registered pesticide products [~~registered by a registrant~~] must be renewed by the scheduled renewal date included in the regis-

tration package as provided by the department. Any newly registered [~~new~~] product [~~registered by a registrant~~] will be prorated by quarter so that the registration will expire at the same time as all other pesticide products of the registrant.

(g) - (h) (No change.)

(i) After a product is registered with the department, the registrant [~~registrants~~] shall provide the department the most current pesticide product label any time the product label is amended. Before distributing the revised product label, the registrant must have written department approval and have met any additional [~~in addition to any applicable~~] federal requirements.

§7.12. Custom Blends.

(a) (No change)

(b) If a restricted-use or state-limited-use pesticide or regulated herbicide is used in the custom blend, the establishment must be licensed as a pesticide dealer in accordance with the Act, Chapter 76, Subchapter D (relating to Licensing of Dealers), and §7.20 of this chapter [~~title~~] (relating to Application).

(c) (No change).

§7.14. Experimental Use Permits.

(a) All experimental use permits (EUP) shall be issued and approved by the EPA prior to submission [~~submitting~~] to the department for approval.

(b) Application for department approval of the EUP shall contain the following information:

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

(4) the name of the pesticide approved EUP permit [~~registration~~] number of the product;

(5) (No change.)

(6) the use(s) [~~use or uses~~] requested for the EUP;

(7) (No change.)

(8) the name and address of all cooperators and location of the proposed EUP [~~experimental use permit~~] application site(s); and

(9) (No change.)

[~~(c) Pesticide registration fees, as established by §7.10 of this title (relating to Registration of Pesticides), are prorated by quarter from the effective date of the EUP and shall accompany each EUP application if the pesticide is not currently registered for other uses in the state by that registrant.~~]

(c) [~~(d)~~] The holder of an EUP shall, as soon as available, submit to the department the results of the experimentation for which the permit was issued.

(d) [~~(e)~~] A person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives, and having so received, [~~(having so received)~~] delivers or offers to deliver any pesticide may not place or sponsor advertisements in this state which recommend or suggest the purchase or use of a pesticide for a use authorized under an EUP, whether the EUP has been approved by the department or not.

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

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SUBCHAPTER C. LICENSING

4 TAC §§7.20 - 7.26

The amendments are proposed pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code; Section 76.072 of the Code, which allows the Department to adopt rules to create a system under which dealer licenses expire on certain dates; Section 76.101 of the Code, which requires the Department to submit a state plan for the licensing of pesticide applicators to the administrator of the EPA; Section 76.102 of the Code, which requires the Department to license pesticide applicators involved in agricultural pest control; Section 76.108 of the Code, which requires the Department to create rules related to commercial applicator licensure; Section 76.109 of the Code, which requires the Department to create rules related to noncommercial applicator licensure; Section 76.111 of the Code, which allows the Department to determine the type of proof of financial responsibility required of applicator businesses; Section 76.112 of the Code, which requires the Department to create rules related to private applicator licensure; Section 76.113 of the Code, which requires the Department to set applicator licensure periods; Section 55.0041 of the Texas Occupations Code, which requires the Department to issue a license to a military spouse who is licensed in good standing by another jurisdiction that has substantially equivalent licensing requirements to those of the Department; and Section 55.007 of the Texas Occupations Code, which requires the Department to credit verified military service, training, or education by military service members or military veterans toward licensing requirements.

The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

§7.20. Application.

(a) An application for a commercial, [~~or~~] noncommercial, or private applicator license will be deemed complete when the applicator has met the applicable licensing requirements.

(b) Application for pesticide dealer or applicator license [~~licenses~~] shall be made on a form prescribed by the department.

(c) Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), the license [~~is valid for two years and~~] shall expire on the last day of the month corresponding to the license anniversary date. Renewals made after the expiration date are subject to applicable late fees.

(d) Except as provided by Chapter 2, Subchapter B of this title, licensing time periods and corresponding licensing and renewal fees are:

(1) Dealers: $250 for two years; and

(2) Applicators:

(A) - (C) (No change.)

(D) Private: $100 for five years; and

(E) (No change.)

(e) (No change.)

(f) The licensee shall notify the department within 30 days of any change in the information provided as part of the application for a license. Failure to provide such information may be grounds for denial, suspension, or revocation of the license.

(g) (No change.)

§7.21. Applicator Certification.

(a) Certification of Applicators. The department may certify pesticide applicator licensees and applicants for a license in the following license use categories and subcategories. An individual who is certified in a particular category is authorized to purchase, apply, or supervise the use of restricted-use [~~restricted use~~] pesticides, state-limited-use [~~state limited use~~] pesticides, or regulated herbicides described by that category subject to department [~~agency~~] orders, the Act, [~~Chapter 76 of the Texas Agriculture Code~~] and federal law.

(1) Agricultural pest control: pesticide applications made to agricultural land as specified in the following subcategories:

(A) field crop: to control insects, diseases, weeds, or other pests of field crops, or the use of harvest aid pesticides in the production of field crops such as cotton, grains, oilseed crops, crops grown for seed, or crops harvested for animal feed (hay) or forage. This category does not include pesticide applications covered in category 1D (vertebrate pest [~~control~~]) or category 11 (soil fumigation);

(B) fruit, nut, and vegetable: to control insects, diseases, weeds, or other pests, or the use of harvest aid pesticides, in the production of non-citrus fruit (category 1G Citrus Pest Control), nut and vegetable crops. This category does not include pesticide applications covered in category 1D (vertebrate pest [~~control~~]) or category 11 (soil fumigation);

(C) (No change.)

(D) vertebrate pest: to control vertebrate pests affecting agricultural production of field, fruit, nut or vegetable crops, in turf, pastures, rangeland, riparian or natural areas, rights of ways, parks, or crops/vegetation to be harvested for animal feed. This category does not include pesticide applications covered in category 1H (livestock protection collar) or category 1I (M-44 device) [~~the use of a sodium cyanide M-44 device (category 1I) or Compound 1080 Livestock Protection Collar (category 1H)~~]. Certification in this category requires prequalification as determined by the department;

(E) farm commodity pest control: to apply pesticides (including commodity fumigants) to stored raw agricultural commodities on the farm, in a public or private confined storage facility or container, in an open storage platform or vehicle, or to agricultural equipment used to transport raw agricultural commodities[~~,~~] to control pests of a stored agricultural product or a pest subject to a state or federal quarantine requirement;

(F) (No change.)

(G) citrus: to control insects, diseases, weeds, or other pests in the production of citrus plants or citrus fruit. This category does not include [~~the~~] pesticide applications covered in category 1D (vertebrate pest [~~control~~]) or category 11 (soil fumigation [~~fumigants~~]);

(H) - (I) (No change.)

(2) Forest pest control: to apply pesticides in forests, forest nurseries, and forest seed production;

(3) Lawn and ornamental plant pest control; and

(A) landscape maintenance: to control pests in the establishment or maintenance of lawns or ornamental plants grown for function or aesthetic purposes in landscapes, such as athletic fields, residential properties, industrial sites, golf courses, parks, and cemeteries. This category does not include the pesticide applications covered in category 1D (vertebrate pest [~~control~~]) or category 11 (soil fumigation); and

(B) nursery plant production: to control pests in the production of ornamental plants or other nursery stock and commercial turf. This category includes plants in field production, greenhouses, shade houses, or similar structures. This category does not include pesticide applications covered in category 1D (vertebrate pest [~~control~~]) or category 11 (soil fumigation [~~fumigants~~]);

(4) (No change.)

(5) Vegetation management: to control unwanted plant growth in rights-of-way, in the maintenance of roads, parking lots, utility lines, wind generator sites, pipelines, railways, airports, public surface drainways and ditches, industrial sites including oil field sites, and adjacent riparian or natural areas and includes public sewer root control;

(6) Aquatic: to control aquatic weeds or other aquatic pests including aquatic animals, microbes, or other pests and may include pesticide applications to adjacent riparian or natural areas when water is present. The category does [~~Does~~] not include applications covered in category 12 (public health pest control (vector control)) [~~category 12~~];

(7) Demonstration and research: for demonstration or research purposes when using restricted-use [~~restricted use~~] pesticides, numbered compounds, any pesticide not registered by the EPA [~~U.S. Environmental Protection Agency~~] (unless exempt from registration under FIFRA Section 25(b)), or any pesticide used in a manner inconsistent with the label directions[~~. No additional categories required~~];

(8) Regulatory pest control: for applications of pesticides when implementing a regulatory program such as a plant pest quarantine, invasive weed control, or other regulated activity conducted by a state, federal or other political subdivision. This category does not include pesticide applications covered in [~~pest control~~] category 12 (public health pest control (vector control));

(9) - (10) (No change.)

(11) Soil fumigation: to apply fumigant pesticides to soil environments. This category is available for all pesticide license types and meets the pesticide product label requirement for EPA approved soil fumigant training. Private applicators may apply soil fumigant pesticides without adding this category, however additional EPA-approved [~~EPA approved~~] training stipulated on the use directions of a soil fumigant pesticide label must be met;

(12) Public health pest control (vector control): for pesticide applications made for the purpose of treating, repelling, mitigating, or otherwise controlling any non-human organism that is, or may be, a vector of human disease by a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district, or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district, or other political subdivision; and

(13) Border mosquito control: for pesticide applications made for the limited purpose of vector mosquito control only in a

county located along the international border with Mexico by an applicator who is an employee of a federal, state, county, city, mosquito or vector control district, or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of a federal, state, county, city, mosquito or vector control district, or other political subdivision. An applicator who is licensed in this category shall have the [~~their~~] license expire immediately upon separation of employment if a passing score in another category is not achieved prior to the date of separation of employment from the political subdivision. This excludes employees transferring from one political subdivision to another in a county along the international border with Mexico.

(b) Private Applicators.

(1) Producers of agricultural commodities who complete an [~~a Texas A&M AgriLife~~] Extension or other department-approved [~~department approved~~] training program for private applicators and obtain a passing score on the private applicator test may be certified in each of the categories and subcategories listed in subsection (a)(1)(A) - (G), (2), (3), (4), and (6) [~~and (10)~~] of this subsection [~~section~~]. A private applicator may be certified as an aerial applicator by obtaining a passing score on the aerial applicator category test. Private applicators will be charged an exam administration fee of $64 for initial testing or retesting. The fee will not be in excess of expenses directly related to recovery of costs for administration of examinations.

(2) The department may allow an entity other than [~~Texas A&M AgriLife~~] Extension to conduct private applicator certification training if the training program:

(A) - (B) (No change.)

(C) complies with all applicable federal and state laws including the Americans with [~~With~~] Disabilities Act (ADA) requirements for access to training programs; and

(D) is submitted to the department for review and prior approval [~~is approved prior to training~~].

(3) An approved training program may include lectures, panel discussions, organized video or film with live instruction, or other forms of instruction [~~activities~~] approved by the department.

(4) Private applicator certification training program content must include, but is not limited to:

(A) (No change.)

(B) reading and understanding laws and regulations and label and labeling information, including the common name of the pesticide to be applied, pest to be controlled, application timing and methods, safety precautions, pre-harvest or reentry provisions, and any specific disposal procedures;

(C) application of pesticides in accordance with label instructions and warnings, including the ability to prepare the proper pesticide concentration to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period;

(D) - (F) (No change.)

(5) The department may deny, revoke, or refuse to renew approval for any [~~or all~~] private applicator training program or sponsor [~~programs or sponsors~~] if the sponsor fails to:

(A) provide to the department[~~, upon request,~~] records of training on request;

(B) [~~fails to~~] provide the quality of approved training [~~approved by the department~~]; or

(C) [~~fails to~~] comply with any other requirements that are a basis for approval [~~or that are a part of these rules~~].

(6) (No change.)

(7) Each training program must be approved by the department. No unapproved activity may be claimed [~~claim~~] to be approved [~~or accepted by the department~~] or described in a way [~~use any other such term~~] that would lead a person to believe that it has been approved [~~by the department unless it is so approved~~].

(8) Each training program shall be approved for one calendar year [~~only~~].

(9) Department personnel may monitor all approved private applicator training programs.[~~, and~~] All [~~all~~] fees charged to trainees [~~by the sponsor~~] shall be waived for them [~~department personnel who monitor the training program~~].

(10) Upon completion of private applicator training, the sponsor shall direct trainees [~~trainee(s)~~] to the department for testing.

(11) To receive approval [~~In order~~] for a private applicator training course [~~to be approved by the department~~], the sponsor must:

(A) submit an [~~a completed department-prepared~~] application on a form prescribed by the department;

(B) provide any additional information related to the proposed course [~~material relevant to the activity which is~~] requested by the department; and

(C) submit the application and all requested and required information [~~required by the department~~] at least 30 days prior to the date the proposed course is intended to be initially held [~~in advance of the first date of the activity~~]. The department may waive this requirement if the sponsor meets [~~the 30-day provision providing~~] all other requirements [~~are met~~]. Within ten days of receipt of the application, the [~~The~~] department will notify [~~respond to~~] the sponsor if the proposed course has been accepted or rejected [~~within ten days of receipt of the application and approve, reject,~~] or will request additional information.

(12) A sponsor [~~Sponsors~~] who wishes [~~wish~~] to continue a course's [~~course~~] approval beyond a calendar year must file for renewal as provided by paragraph (11) of this subsection [~~annually on a form prepared by the department~~].

§7.22. Licensing of Applicators.

(a) - (e) (No change.)

(f) Private applicators must meet the following requirements:

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

(4) Military service members and military veterans, as defined in Texas Occupations Code, Chapter 55, will be credited with experience equivalent to the training required by §7.21(b)(4)(A) - (F) of this chapter [~~title~~] (relating to Applicator Certification).

§7.23. Applicator Business Proof of Financial Responsibility.

Each applicator business, as defined in the Act, §76.111, shall register with the department [~~on a prescribed form and file proof of financial responsibility~~] prior to making any applications of restricted-use or state-limited-use pesticides or regulated herbicides. This requirement shall be satisfied in the following manner.

(1) If the applicator business is a [~~licensed~~] commercial applicator, the applicator shall, on application for the commercial applicator license, attest to the existence of adequate financial responsibility

in the amounts and under the terms stated in the Act, §76.111, on a form provided by the department.

(2) An applicator business that is not a licensed commercial applicator, but instead employs one or more licensed commercial applicators, shall attest to the existence of adequate financial responsibility in the amounts and under the terms stated in the Act, §76.111, on a form provided by the department.

(3) - (4) (No change.)

(5) For purposes of this section [~~rule~~], financial responsibility means a liability insurance policy in the name of the applicator business meeting the requirements of the Act, §76.111, [~~of the Act~~] pertaining to such insurance policies. The department has determined that no other form of financial responsibility is acceptable.

§7.24. Applicator Recertification.

(a) - (c) (No change.)

(d) The department shall assign one continuing education unit (CEU) for each 50 minutes of net actual instruction time presented at an approved activity. Accreditation will consist of no less than one CEU for any given course or session. Accreditation in one-half [~~1/2~~] CEUs may be allowed as determined by the department.

(e) (No change.)

(f) The department may consider for approval "correspondence activities" such as videos, interactive internet, and/or other activities approved by the department. To be eligible for approval the department will require:

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

(g) - (j) (No change.)

(k) The department may enter into a memorandum of agreement with another state or non-profit professional society or association to recognize the state's pesticide applicator recertification or the society's professional recertification for satisfaction of the requirements of this section for commercial, noncommercial, and private applicator recertification only if:

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

(l) - (n) (No change.)

(o) Sponsors of approved activities shall:

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

(5) maintain activity rosters for a period of two [~~2~~] years from the date of activity. Rosters are to be made available to the department upon request.

(p) Sponsors of approved correspondence activities shall:

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

(3) provide the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or in a department-approved [~~department approved~~] format;

(4) - (5) (No change.)

(6) maintain activity rosters for a period of two [~~2~~] years from the date of activity. Rosters are to be made available to the department upon request.

(q) - (s) (No change.)

(t) Except as provided in paragraph (1) of this subsection, each commercial or noncommercial applicator must obtain at least five CEUs prior to the expiration of the license. A minimum of one hour each must be obtained from two of the following categories: integrated pest management, laws and regulations, or drift minimization.

(1) (No change.)

(2) A commercial or noncommercial applicator may not recertify [~~their license~~] using department-approved correspondence activities for two consecutive years.

(u) An applicator who becomes unlicensed in any licensing year may not be relicensed for 12 months unless all CEUs required for the last year of licensing are completed. Until the 12-month period has elapsed, applicators are prohibited from retesting under §7.22 of this chapter [~~the title~~] (relating to Licensing of Applicators).

(v) (No change.)

(w) Failure to comply with the continuing education requirements for commercial, noncommercial, and private applicators will:

(1) (No change.)

(2) prohibit the applicator [~~applicators~~] from retesting for a new license in lieu of meeting recertification requirements until one year after the expiration of the [~~their~~] license;

(3) (No change.)

(4) require retraining of a commercial, noncommercial, or [~~and~~] private applicator [~~applicators~~] for categories or subcategories requiring special training if the applicator does not recertify and renew in one year following the expiration of the license; and

(5) subject a noncompliant applicator to administrative, civil, or criminal penalties and/or license or certificate revocation, suspension, modification, or probation for failure to comply with continuing education requirements if the applicator operates under a license that has not been renewed.

(x) An applicator may seek credit for a continuing education activity that has not been submitted by the sponsor to the department, and the department will evaluate the supporting documentation of the course and assign the appropriate number of credits for the activity. To be eligible for accreditation, the following conditions must be met:

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

(3) the activity must be in an area directly related to the activities of a commercial, noncommercial, or private applicator;

(4) the applicator shall provide the department with sufficient information describing activity content including the time allotted to each aspect of the activity, identification of the sponsor, the instructor's name and address, proof of attendance, and date, time, and place of the activity; and

(5) (No change.)

(y) - (z) (No change.)

§7.25. Expiration and Renewal of Licenses.

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

(c) If a complete application for renewal of a commercial, noncommercial, or private applicator's license is not submitted within one year after the expiration of the license, the license will be deemed to be terminated voluntarily and a renewal application will not be accepted. Before being licensed again, the applicator must meet the requirements for a new license.

(d) (No change.)

(e) Military service members or military veterans as defined in Texas Occupations Code, Chapter 55, will be credited with experience

[~~when~~] equivalent to the pre-license requirements of §7.21(b)(4)(A) - (F) of this chapter [~~title~~] (relating to Applicator Certification).

(f) (No change.)

(g) If a qualified military spouse applicant holds a current license issued by another jurisdiction and licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of the department, the department shall issue the applicant a license. For purposes of this subsection, substantially equivalent means:

(1) (No change.)

(2) the other jurisdiction has a state pesticide plan approved by the EPA [~~U.S. Environmental Protection Agency~~]; and

(3) (No change.)

§7.26. State Plan for Certification of Applicators.

The department hereby adopts by reference the State of Texas Plan for Certification of Pesticide Applicators with appendices submitted by the department to the administrator of the EPA [~~Environmental Protection Agency~~] pursuant to the requirements of 7 United States Code §136i [~~, §136(b)(2)~~]. A copy of the plan may be obtained upon request from the department.

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

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Assistant General Counsel
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SUBCHAPTER D. USE AND APPLICATION

4 TAC §§7.30 - 7.33, 7.36, 7.37, 7.39, 7.40

The amendments are proposed pursuant to Section 76.003 of the Texas Agriculture Code (Code), which allows the Department to adopt a list of state-limited-use pesticides and to regulate their terms and conditions of use; Section 76.004 of the Code, which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code; Section 76.075 of the Code, which requires the Department to adopt record-keeping rules related to dealers' distributions of restricted-use and state-limited-use pesticides and regulated herbicides; Section 76.104 of the Code, which allows the Department to adopt rules related to the use and application of pesticides to include rules related to restricted-use and state-limited-use pesticides and regulated herbicides; Section 76.114 of the Code, which requires the Department to prescribe the information to be entered into pesticide application records; Section 76.141 of the Code, which allows the Department to adopt a list of regulated herbicides; and Section 76.142 of the Code, which allows the Department to adopt rules related to the application of regulated herbicides.

The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

§7.30. Classification of Pesticides.

(a) State-Limited-Use Pesticides Defined by Active Ingredient.

(1) Except as provided by paragraphs (3) - (4) of this subsection and because of their high potential to cause adverse effects to non-target sites, a pesticide product containing an active ingredient in the following list is classified as a state-limited-use pesticide and subject to the restrictions listed in paragraph (5) of this subsection, as well as all other provisions of law generally applicable to state-limited-use pesticides.

(A) 2,4-Dichlorophenoxyacetic acid (2,4-D); including acid, amine, choline, ester, and salt formulations;

(B) - (K) (No change.)

(2) Regulated Herbicides.

(A) 2,4-dichlorophenoxyacetic acid (2,4-D); including acid, amine, choline, ester, and salt formulations;

(B) - (D) (No change.)

(3) (No change.)

(4) A pesticide product containing an active ingredient listed in this subsection is exempt from classification as a state-limited-use pesticide or a regulated herbicide under this subsection if the product:

(A) (No change.)

(B) is a specialty fertilizer mixture labeled for ornamental use and registered as a commercial fertilizer under Chapter 63 of the [~~Agriculture~~] Code; or

(C) (No change.)

(5) The following are restrictions on use and distribution of state-limited-use [~~State-Limited-Use~~] pesticides and regulated herbicides:

(A) A person may not purchase or use a pesticide classified as a state-limited-use pesticide or as a regulated herbicide under this subsection unless the person is licensed as a pesticide applicator under either the Act or working under the direct supervision of a person so licensed, [~~Chapter 76 of the Agriculture Code~~] or Chapter 1951 of the Texas Occupations Code [~~or working under the direct supervision of a person so licensed~~].

[~~(B) A person may not use a pesticide classified as a state-limited-use or as a regulated herbicide under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Agriculture Code or Chapter 1951 of the Occupations Code or working under the direct supervision of a person so licensed.~~]

(B) [~~(C)~~] A person may not distribute a pesticide classified as state-limited-use or as a regulated herbicide under this subsection to a person not authorized by this section to purchase state-limited-use pesticide or a regulated herbicide.

(C) [~~(D)~~]) A person may not apply 2,4-dichlorophenoxyacetic acid (2,4-D) on a transgenic auxin herbicide tolerant crop unless the person has attended an auxin training course approved by the department [~~Department~~] prior to application.

(i) One (1) 2,4-D continuing education unit (CEU) shall be required annually and is valid for one year from the date of course attendance.

(ii) Courses shall be approved by the department [~~Department~~] and may not be less than 50 minutes in length for each active ingredient. No more than one (1) CEU will be assigned for any

50 minutes of actual instruction time in Laws and Regulations as described in §7.24 of this chapter (relating to Applicator Recertification) [~~title, relating to applicator recertification~~].

(iii) Each course shall include topics on: application timing, nozzle requirements/selection, wind speed, ground speed, boom height, tank cleanout, sensitive crops, [~~and~~] buffer zone requirements, weather conditions, [~~and~~] drift, volatility, and inversion.

(D) [~~(E)~~] A person may not apply 3,6-Dichloro-o-anisic acid (dicamba) on a transgenic auxin herbicide tolerant crop unless the person has attended an auxin training course approved by the department [~~Department~~] prior to application.

(i) One (1) dicamba continuing education unit (CEU) shall be required annually and is valid for one year from the date of course attendance.

(ii) Courses shall be approved by the department [~~Department~~] and may not be less than 50 minutes in length for each active ingredient. No more than one (1) CEU will be assigned for any 50 minutes of actual instruction time in Laws and Regulations as described in §7.24 of this chapter [~~title, relating to applicator recertification~~].

(iii) Each course shall include topics on: application timing, nozzle requirements/selection, wind speed, ground speed, boom height, tank cleanout, sensitive crops, [~~and~~] buffer zone requirements, weather conditions, [~~and~~] drift, volatility, and inversion.

(b) State-Limited-Use Pesticides Defined by Use.

(1) Due to the high potential for adverse effects to humans, animals, or the environment and as the result of wide area public health pest control, a pesticide product otherwise classified as general use is classified as a state-limited-use pesticide when, and only when, applications are made by aerial application or with power-driven fogging equipment for the purpose of public health pest control.

(2) A person may not use a pesticide for public health pest control in methods identified in paragraph (1) of this subsection unless the person is licensed as a pesticide applicator under the Act [~~Chapter 76 of the Agriculture Code~~] and certified in the public health pest control category as described in §7.21 of this chapter (relating to Applicator Certification) or is working under the direct supervision of a person so licensed and is employed either by a state, county, city, or other local governmental body or is a person authorized to perform public health pest control under a contract between a state, county, city, or other local governmental body and the person or the person's employer.

[~~(3) For purposes of this subsection, "public-health pest control" has the same meaning as provided in §7.21(a)(12) of this chapter subchapter (relating to Applicator Certification).~~]

(c) Prohibited Pesticides.

(1) Because of their persistence in the environment and bioaccumulative toxic effects, any product or substance in the following list or containing as an active ingredient a product or substance in the following list is a prohibited pesticide and subject to the prohibitions, restrictions, and requirements of paragraphs (2) and (3) of this subsection:

(A) - (J) (No change.)

(K) 2,4,5-trichlorophenoxyacetic acid (2,4,5-T); and

(L) (No change.)

(2) (No change.)

(3) A person in possession of a prohibited pesticide shall by proper storage, care, handling, and transport prevent the release of the prohibited pesticide into the environment, [~~and shall~~] prevent exposure of human beings or other susceptible species to the prohibited pesticide, and [~~shall~~] dispose of the prohibited pesticide in accordance with all provisions of state and federal law.

§7.31. Supervision.

(a) (No change.)

(b) A person may not supervise the use of a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is licensed as a commercial, non-commercial, or private applicator with the department. A certified private applicator may not supervise the use of restricted-use or state-limited-use pesticides or regulated herbicides. A licensed applicator may not supervise an applicator whose license or certificate is under revocation or suspension.

(c) - (d) (No change.)

(e) Except as provided in subsection (f) of this section, each licensed applicator is responsible for assuring that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual. Working includes transporting a restricted-use or state-limited-use pesticide or regulated herbicide in any type of distributing or transporting equipment ready for application; mixing, storing, and handling in packages or containers that have been opened; and applying and disposing of restricted-use or state-limited-use pesticides or regulated herbicides and cleaning equipment used to apply the pesticide. At a minimum, instructions shall include a review of appropriate sections of the Act [~~Texas pesticide law~~] and related [~~the Texas pesticide~~] regulations, and reading of complete labeling information for the particular use of the pesticide product being applied. To ensure that appropriate instructions have been given to a nonlicensed person, the licensed applicator must verify or provide handler training to the nonlicensed applicator in accordance with the requirements of WPS. Licensed applicators supervising individuals applying products not under the scope of WPS must review the label with them [~~the individual~~] and have them [~~the individual~~] sign and date the label or complete a form prescribed by the department.

(f) Licensed applicators employed by political subdivisions or cemeteries who supervise nonlicensed employees that make any pesticide application are responsible for assuring that the following requirements are met:

(1) On an annual basis and prior to the nonlicensed employee making a [~~their~~] first application, the nonlicensed employee must be trained in the specific use of the pesticide applied. The training requirement may be satisfied by either:

(A) the nonlicensed employee obtaining five CEUs in accordance with the continuing education required for licensed commercial and noncommercial applicators pursuant to §7.24 of this chapter [~~title~~] (relating to Applicator Recertification); or

(B) the nonlicensed employee receiving training [~~is trained~~] on the appropriate laws and regulations pertaining to pesticide use, the label information for the use of all pesticides [~~that are~~] applied, and pesticide safety training.

(2) (No change.)

(g) (No change.)

(h) A licensed private applicator may supervise the use of a restricted-use or state-limited-use pesticide or a regulated herbicide by a nonlicensed person on the property owned or controlled by the nonlicensed person, in accordance with the provisions of the Act [~~Code~~],

§76.112(a)(2), and subsection (e) of this section, and provided the licensed private applicator maintains a record of the application and also provides a record of the application to the nonlicensed person.

(i) (No change.)

§7.32. Records of Distribution.

(a) A person required to be licensed as a pesticide dealer by the Act, §76.071, shall maintain [~~for a period of two years~~] a record of each distribution of a restricted-use pesticide, state-limited-use pesticide, or regulated herbicide for a period of two years.

(b) The record of each distribution required to be kept by this section shall be kept separate from the person's other business records and shall contain:

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

(5) the name and address of any person who took delivery of the pesticide on behalf of, and acting under the authorization of the responsible licensed or certified applicator, including distributions to any entity on behalf of a Texas-licensed [~~Texas licensed~~] pesticide dealer.

(6) if a pesticide that has been classified as a state-limited-use pesticide or a regulated herbicide but[~~, and is~~] not a restricted-use pesticide under FIFRA[~~,~~] is made available to an unlicensed [~~a nonlicensed~~] person that resides out-of-state, and the person does not intend to use the pesticide in this state, the name and out-of-state address of the person. If the person holds a valid applicator license issued by another state or federal agency, the dealer must record that license number and the state or federal agency that issued the license.

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

§7.33. Records of Application.

(a) (No change.)

(b) The record of each pesticide use required by this section shall contain:

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

(5) for each pesticide applied:

(A) - (C) (No change.)

(D) the total volume of spray mix, dust, granules, or other materials applied per unit; and

(E) (No change.)

(6) - (13) (No change.)

(14) Documentation to verify training of persons working under the supervision of a licensed pesticide applicator as required by §7.31 of this chapter (relating to Supervision) [~~title~~].

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

§7.36. Application of Worker Protection Standard.

(a) (No change.)

(b) All certified and licensed applicators or trained trainers who conduct WPS pesticide safety training must:

(1) maintain records of each trainee for five years. These records must include a copy of each dated class roster signed by the trainer and each trainee[~~, with the verification card number issued to the trainee, and the city or county and state where the training occurred~~];

(2) issue a copy of an EPA training roster [~~verification cards~~] only to a trainee [~~trainees~~] who has [~~have~~] been trained in accordance with [~~the requirements of the~~] WPS requirements[~~, including the correct use of training materials developed or approved by EPA~~];

(3) record trainee information on the training roster [~~verification cards,~~] in ink or other indelible form;

(4) on request, issue copies of training rosters [~~EPA training verification cards~~] that match EPA specifications or that comply with state variations from such specifications that have prior approval from EPA; and

(5) promptly respond to requests from EPA, state, or tribal agencies or agricultural employers for information concerning issued EPA training rosters [~~verification cards~~].

(c) The EPA WPS warning flag/sign referred to in WPS and §7.37 of this chapter [~~title~~] (relating to Notification Requirements) must look like the one pictured as follows. Additional information may be included on the warning sign, such as the name of the pesticide or the date of application, if it does not lessen the impact of the flag/sign or change the meaning of the required information. If the required information is added in other languages, the words must be translated correctly. The flag/sign must be at least 14 inches by 16 inches, and the letters must be at least one inch high. For nursery and greenhouse operations, the warning sign/flag may meet the minimum requirements as approved by the EPA.

Figure: 4 TAC §7.36(c) (No change.)

§7.37. Prior Notification Requirements.

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

(c) The following persons may request prior notification of a pesticide application:

(1) (No change.)

(2) persons in charge of licensed day-care centers, primary and secondary schools, hospitals, inpatient clinics, or nursing homes within 1/4 mile of the field on which pesticides are to be applied. The parent of a primary or secondary school student may for good cause request notification from the department if the person in charge of the school has refused to request notification. If the department determines that notification should be given, the department shall notify the farm operator to give notification to the person in charge of the school; and

(3) (No change.)

(d) - (f) (No change.)

(g) The following methods may be used for giving notification of a scheduled pesticide application:

(1) Except as provided by subsection (n) of this section if the request for notification is made pursuant to this section, the notification may be made by:

(A) raising a flag/sign;[~~.~~]

(i) The EPA WPS [~~posted~~] warning flag/sign as shown in §7.36 of this chapter (relating to Application of Worker Protection Standard) shall be raised to a height of at least approximately five feet, with the bottom of such flag/sign always at least two feet above the top of the crop, in or about the field to which pesticides are scheduled to be applied so that the flag/sign is located no farther than 650 yards from the nearest property line of any person requesting notification.

(ii) - (iii) (No change.)

(B) - (C) (No change.)

(2) (No change.)

(3) If the request for notification is made pursuant to subsection (c)(2) of this section, notification may be given in person or by telephone in English or, when appropriate, Spanish. Alternatively, if

mutually agreed by the farm operator and the person in charge of any such facility, notification may be given [~~to such facilities~~] by posting a flag/sign at a designated location.

(4) No request is necessary for prior notification of camps owned, managed, or controlled by the farm operator and located on the field[~~;~~] or licensed farm labor camps located on the field or within 1/4 mile of the field on which pesticides are to be applied. Notification shall be provided by telephone or in person to the head of each household. Alternatively, the farm operator may provide notification in writing by placing a written notice on a bulletin board to which the camp has access.

(5) A farm operator may notify the department that the farm operator has given or been unable to give a notification by telephone or in person to establish a record of such notice. The department shall maintain a record of such notifications [~~notification from operators to the department~~]. It is a violation of this section to provide false information to the department about efforts to reach a requesting party or about failure to receive such notification.

(h) (No change.)

(i) Notice shall be given not later than 24 hours [~~on the day~~] prior to a scheduled pesticide application.

(1) Notice shall be deemed given pursuant to subsection (g)(1) and (3) of this section:

(A) at the time of delivery of notification [~~(in person, in writing, or by telephone)~~] to the requesting person or at the time of delivery of notification to the address provided in the request for prior notification;

(B) - (C) (No change.)

(2) Notice shall be deemed given pursuant to subsection (g)(4) of this section [~~at the time of delivery of notification in person, by telephone, or by posting the required notice~~]:

(A) - (B) (No change.)

(j) In the event [~~Advance notice need not be given on the day before when~~] an immediate application is required and notice cannot be given as required by subsection (i) of this section, such notice need not be given [~~time does not reasonably allow the giving of notice on the day before a pesticide application~~]. Notice of an emergency application shall be given:

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

(k) - (l) (No change.)

(m) All complaints filed under this section shall be reviewed and investigated by the department in the same manner as any other complaints filed under this chapter.

(n) The Texas Boll Weevil Eradication Foundation (foundation) or other areawide pest control programs sponsored by a governmental entity must adhere to the following:

(1) (No change.)

(2) A request for notification of an application made by an entity covered by this subsection may be made by [~~all of~~] those persons listed in subsection (c) of this section. No request is necessary for prior notification of farm labor camps owned, managed, or controlled by a farm operator and located on or within 1/4 mile of a field on which pesticides are to be applied by the foundation or other entity; provided that the farm operator is responsible for notifying the foundation or other entity of the presence of such labor camps.

(3) Requests made under this section shall be [~~made~~] in writing to the foundation or other entity or the farm operator and shall include [~~all of~~] the information required by subsection (d) of this section.

(4) The farm operator is responsible for notifying the foundation or other entity covered by this subsection of any requests for prior notification received by the farm operator relating to an application that will be made or caused to be made by the foundation or other entity. The information must be provided to the foundation or other entity within 24 hours of its receipt by the farm operator. The information may be provided:

(A) (No change.)

(B) by mailing [~~forwarding~~] the written request to the foundation or other entity [~~in the U.S. mail~~] at an [~~a mailing~~] address obtained from the department; or

(C) by any other reasonable means, so [~~as~~] long as the information is forwarded within 24 hours of its receipt.

(5) Prior to [~~the~~] making [~~of~~] the first application in each calendar year, the foundation or other entity shall request that the farm operator notify it of any requests for prior notification already in effect for property on which the foundation or other entity will be making applications and of any future requests for prior notification on that property.

(6) A request for prior notification under this subsection shall be in effect through December 31 of the year that the request is received. The foundation or other entity shall begin notifying the requesting party of scheduled pesticide applications within 10 days of receipt of a request for notification.

(A) Notification shall be provided as follows:

(i) Notification may be given in writing, by raising a flag/sign in the manner provided in [~~at~~] subsection (g)(1)(A) of this section, in person, by telephone in English or, when appropriate, Spanish, or by other means mutually agreed upon by the requesting party and the foundation or other entity. This agreement must be in writing and a copy filed with the department. For purposes of providing notice to medically affected persons or to licensed day care centers, primary and secondary schools, hospitals, inpatient clinics and nursing homes, "notification in writing" means other than by mail such as by posting a written notice on the requester's front door or at the requester's place of business.

(ii) If the foundation or other entity is unable to reach a person entitled to notification under this section after making reasonable efforts, it [~~the foundation or other entity~~] may immediately notify the department by telephone of the following information:

(I) - (V) (No change.)

(iii) (No change.)

(iv) If the foundation or other entity telephones the department between 8:00 a.m. and 5:00 p.m., Monday through Friday [~~Monday-Friday~~], the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempts shall be maintained by the department for the duration of the notification request.

(v) (No change.)

(B) (No change.)

(7) Notice shall be given no later than 24 hours [~~the day~~] prior to a scheduled pesticide application.

(8) Notice [~~Advance notice~~] need not be given in accordance with paragraph (7) of this subsection [~~on the day before an application~~] when an immediate application is required and time does not reasonably allow the giving of such notice [~~on the day before the pesticide application~~]. In this event, notice [~~Notice~~] of an immediate emergency application shall be given:

(A) (No change.)

(B) by telephone or in person to a medically-affected person as soon as reasonably possible, but not less than one hour before the application. However, an immediate emergency application need not be postponed if, after reasonable efforts by the foundation or other entity, actual notice cannot be given.

(9) (No change.)

§7.39. Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar (LPC)--State-Limited-Use Requirements.

(a) (No change.)

(b) In addition to the definitions set out in the Act, §76.001, and §7.1 of this chapter [~~title~~] (relating to Definitions), the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) LPC applicator--A person who has obtained a license from the department as a private, commercial, or noncommercial applicator or who has obtained a private applicator certificate and has fulfilled the requirements for livestock protection collar certification as set forth in this section. Private applicators may certify to use the livestock protection collar on property owned, leased, or rented by the person or the person's employer or under the person's general control. Employees of government agencies who apply collars in administration of official duties or persons that apply collars on their own or employer's property may obtain a livestock protection collar certification under a noncommercial license. Persons operating a business or employed by a business to apply livestock protection collars on the property of another for hire must obtain livestock protection collar certification under a commercial applicator license.

(2) (No change.)

(3) Registrant agent--A representative of a registrant. Each registrant agent must be a licensed pesticide dealer[~~,~~] or a licensed private, commercial, or noncommercial applicator certified in the livestock protection collar subcategory, and approved by the department to distribute livestock protection collars to approved LPC applicators.

(4) (No change.)

(c) Distribution requirements. Registrants, registrant agents, and collar pool agents distributing livestock protection collars must meet the following requirements.

(1) Each registrant must obtain a license under the Act, §76.071, and comply with the provisions of §7.20 of this chapter [~~title~~] (relating to Application).

(2) Each registrant and registrant agent who distributes livestock protection collars must obtain a license as a private, commercial, or noncommercial applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Each collar pool agent who distributes livestock protection collars must possess a private applicator certification and obtain certification in the livestock protection collar subcategory or obtain a license as a private, commercial, or noncommercial applicator with certification in the livestock protection collar subcategory and, except for county extension agents, a pesticide dealer license. Collars shall be distributed only by registrants or agents and only to certified livestock protection collar applicators.

(3) - (8) (No change.)

(d) In order to be certified as an LPC applicator, the following criteria must be met.

(1) A person seeking certification as a licensed commercial LPC applicator shall comply with the licensing requirements of §7.22 [~~§7.22(d)~~] and §7.23 of this chapter [~~title~~] (relating to Licensing of Applicators and Applicator Business Proof of Financial Responsibility), complete livestock protection collar training, pass a test prescribed by the department, and pay the license fee prescribed by §7.20 of this chapter [~~title~~] (relating to Application).

(2) A person seeking certification as a licensed noncommercial LPC applicator shall comply with the licensing requirements of §7.22 [~~§7.22(d)~~] of this chapter [~~title~~] (relating to Licensing of Applicators), complete livestock protection collar training, pass a test prescribed by the department and pay the license fee prescribed by §7.20 of this chapter. [~~title (relating to Application);~~]

(3) A person seeking certification as a private LPC applicator must possess a valid private applicator certificate or a private applicator license in accordance with §7.22 [~~§7.22(f)~~] of this chapter [~~title~~] (relating to Licensing of Applicators), complete livestock protection collar training, and pass a test prescribed by the department. No testing fee will be collected from private applicators.[~~;~~]

(4) All LPC applicators must recertify as required by §7.24 of this chapter [~~title~~] (relating to Applicator Recertification). Each LPC applicator is responsible for giving written notice to the department of any change of address. The department may require retraining and retesting of any LPC applicator who fails to comply with the use, recordkeeping or other requirements of the department.

(5) The licensing requirements of §7.25 of this chapter (relating to Expiration and Renewal of Licenses) apply to all LPC applicators.

(e) - (f) (No change.)

(g) Each registrant shall maintain records for the registrant and all registrant agents on forms prescribed by the department for at least two years which include:

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

(5) Each LPC applicator shall maintain records on the use of the collar on forms prescribed by the department. The records shall include:

(A) - (F) (No change.)

(G) all suspected poisonings of humans, domestic animals, or nontarget wild animals resulting from collar use and all other accidents involving the release of Compound 1080; and

(H) (No change.)

(6) (No change.)

(7) Each registrant, agent, or LPC applicator shall report accidents involving any suspected or actual poisoning of threatened or endangered species, humans, domestic animals, or nontarget wild animals to the department within one working day [~~immediately (within one working day)~~] by telephone.

(h) Instructions to noncertified applicators working under the supervision of a licensed LPC applicator. The licensed LPC applicator shall give appropriate verifiable instructions on the use of the collar to a noncertified person as required by §7.31 of this chapter [~~title~~] (relating

to Supervision) before the noncertified person may handle the collar. Licensed commercial LPC applicators must be physically present to supervise use of collars by noncertified applicators. Certified private applicators authorized to apply collars may not supervise any person using collars.

§7.40. M-44 Sodium Cyanide--State-Limited-Use Requirements.

(a) (No change.)

(b) In addition to the definitions set out in the Act, §76.001 and §7.1 of this chapter [~~title~~] (relating to Definitions), the following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise:

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

(c) Dealers distributing M-44 sodium cyanide must meet the following requirements:

(1) All dealers who wish to distribute M-44 sodium cyanide must obtain written approval by the department. In order to obtain approval [~~to handle M-44 sodium cyanide from the department~~], a person must obtain from the department a pesticide dealer's license to handle restricted-use and state-limited-use pesticides and regulated herbicides and complete special agreement forms to become an authorized dealer for the purpose of distributing M-44 sodium cyanide. An authorized dealer must meet the dealer requirements of the Act, Subchapter D [~~§§76.071-76.077~~], the requirements of §7.20 of this chapter [~~title~~] (relating to Application), and any additional [~~federal~~] requirements related to [~~of~~] the use restriction bulletin [~~(label)~~] and label for M-44 sodium cyanide [~~under~~] (EPA Registration Number 33858-2).

(2) - (4) (No change.)

(5) Each authorized dealer must maintain [~~for a period of two years~~] complete records of all transactions involving M-44 sodium cyanide for a period of two years, including:

(A) the amount of materials purchased by the authorized dealer and the date of purchase; and

(B) (No change.)

(6) Authorized dealers must ensure that any distribution of M-44 sodium cyanide is accompanied by a complete label. Authorized dealers must also provide to M-44 applicators [~~the~~] recordkeeping forms prescribed by the department. Authorized dealers may distribute sodium cyanide capsules only in boxes of ten, 25, or 50 [~~each, in boxes of 25 each, or in boxes of 50~~] each.

(7) - (8) (No change.)

(d) Any person not previously certified as an M-44 sodium cyanide applicator may become certified by meeting the following criteria:

(1) A person seeking certification as a licensed commercial M-44 sodium cyanide applicator shall comply with the licensing requirements of §7.22(d) and §7.23 of this chapter [~~section~~] (relating to Licensing of Applicators and Applicator Business Proof of Financial Responsibility), complete M-44 sodium cyanide training, [~~and~~] pass a test prescribed by the department, and pay the license fee prescribed by §7.20 of this chapter [~~section~~] (relating to Application).

(2) A person seeking certification as a licensed noncommercial M-44 sodium cyanide applicator shall comply with the licensing requirements of §7.22(d) of this chapter [~~title~~] (relating to Licensing of Applicators), complete M-44 sodium cyanide training, pass a test prescribed by the department, and pay the license fee prescribed by §7.20 of this chapter [~~title~~] (relating to Application).

(3) A person seeking certification as a private M-44 sodium cyanide applicator must possess a valid private applicator certificate or a private applicator license in accordance with §7.22(f) of this chapter [~~title~~] (relating to Licensing of Applicators), complete M-44 sodium cyanide training, and pass a test prescribed by the department. No testing fee will be collected from private applicators.

(4) All M-44 sodium cyanide applicators must recertify as required by §7.24 of this chapter [~~title~~] (relating to Applicator Recertification). Each M-44 sodium cyanide applicator is responsible for giving written notice to the department of any change of address. The department may require retraining and retesting of any M-44 sodium cyanide applicator who fails to comply with [~~the~~] use, recordkeeping, or other requirements of the department.

(5) The licensing requirements of §7.25 of this chapter (relating to Expiration and Renewal of Licenses) apply to all M-44 sodium cyanide applicators.

(e) Instructions to noncertified applicators working under the supervision of licensed M-44 sodium cyanide applicators. The licensed M-44 sodium cyanide applicator shall give appropriate verifiable instructions on the use of M-44 sodium cyanide to a noncertified person as required by §7.31 of this chapter [~~title~~] (relating to Supervision) before the noncertified person may handle M-44 sodium cyanide. Licensed commercial and noncommercial M-44 sodium cyanide applicators must be physically present to supervise the use of M-44 sodium cyanide by noncertified applicators. Certified private applicators may not supervise any person using M-44 sodium cyanide.

(f) (No change.)

(g) All M-44 applicators must comply with the M-44 sodium cyanide label and [~~including the~~] use restriction bulletin [~~on M-44 sodium cyanide~~] issued by the department [~~(EPA Registration Number 33858-2) when using M-44 sodium cyanide~~]. A copy [~~Copies~~] of the use restriction bulletin [~~restrictions~~] must be obtained with the purchase of each box of M-44 sodium cyanide. Additional copies of the bulletin and recordkeeping forms may be obtained from the department.

(h) (No change.)

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

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SUBCHAPTER E. REGULATED HERBICIDES

4 TAC §§7.50 - 7.53

The amendments are proposed pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code; Section 76.104 of the Code, which allows the Department to adopt rules related to the use and application of pesticides to include rules related to restricted-use and state-limited-use

pesticides and regulated herbicides; and Section 76.144 of the Code, which gives the Department the authority to adopt rules concerning the use of regulated herbicides in a county in which the commissioners court has entered an order in accordance with that section.

The code affected by the proposal is Texas Agriculture Code, Chapter 76.

§7.50. General Requirements for Regulated Herbicide Applicators.

(a) The following requirements are applicable to persons applying regulated herbicides in regulated counties. No person shall apply regulated herbicides as defined in §7.30 of this chapter [~~title~~] (relating to Classification of Pesticides), without first obtaining a spray permit for such application. A blanket permit may be issued to a licensed or certified applicator. The department may require a licensed or certified applicator who has obtained a blanket permit to submit a supplemental report of any regulated herbicide applied under the terms of the permit.

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

(3) Applications by an applicator licensed by the Texas Structural Pest Control Service in the Weed Control category as defined in §7.124 of this chapter (relating to Structural License Categories) [~~Board in turf and weed control and a nurseryman licensed by the department in turf weed control for structural pest control applications~~] are exempt from the permit requirements of this section.

(4) (No change.)

(b) (No change.)

§7.51. Requirements for Special County Provisions.

(a) (No change.)

(b) The department may consider for adoption a request by a county to:

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

(3) exempt from the provisions of the Act, Subchapter G [~~of the Code~~], any portion of a county which can be identified by easily recognizable physical boundaries.

§7.52. Counties Regulated.

The following counties shall be subject to the provisions of the Act, Subchapter G, unless specifically excepted by provisions of §7.53 of this chapter [~~title~~] (relating to County Special Provisions): Aransas, Austin, Bailey, Baylor, Brazoria, Brazos, Briscoe, Burleson, Childress, Cochran, Collin, Collingsworth, Culberson, Dallas, Dawson, Deaf Smith, Delta, Dickens, Donley, El Paso, Falls, Foard, Fort Bend, Gaines, Galveston, Hall, Harris, Hardeman, Haskell, Hudspeth, Hunt, Jackson, King, Knox, Lamar, Lamb, Loving, McLennan, Martin, Matagorda, Midland, Milam, Moore, Motley, Parmer, Refugio, Robertson, Rockwall, Runnels, San Patricio, Waller, Ward, Wharton, and Wilbarger.

§7.53. County Special Provisions.

(a) - (e) (No change.)

(f) Brazos. That portion of Brazos County lying east of the Brazos River and west of the following described line shall be regulated by the Act, Subchapter G and regulations adopted thereunder. The eastern boundary of the regulated area is as follows:

(1) beginning at the intersection of State Highway No. 6 and Old San Antonio Road (OSR), which point is on the north boundary line of Brazos County; thence in a southerly direction along OSR to its intersection with Texas Highway 21; thence in a westerly direction along Texas Highway 21 to the Little Brazos River; thence in a southerly direction along the east bank of the Little Brazos River to its intersection with the Brazos River; thence in a southerly direction along the east bank of the Brazos River to Koppe Bridge Road; commencing again on FM 159 in Allen Farm at the railroad intersection along FM 159 to its intersection with State Highway 105 [~~thence in an easterly direction along Koppe Bridge Road to its intersection with FM 2154 (Wellborn Road); thence southeasterly along FM 2154 to its intersection with State Highway 6; thence southeast along State Highway 6 to its intersection with the Navasota River, which is the southern boundary of Brazos County~~].

(2) (No change.)

(g) - (pp) (No change.)

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SUBCHAPTER F. ENFORCEMENT

4 TAC §7.60

The amendments are proposed pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code and Section 76.151 of the Code, which allows the Department to inspect premises of those engaging in any activity regulated under Chapter 76 of the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 76.

§7.60. Enforcement.

In addition to the enforcement powers of the commissioner found in the Act, Subchapter H, the department may enter the premises of a person who engages in any activity regulated under the Act and this chapter [~~commercial, non-commercial, or private applicator, nursery, greenhouse, a registrant or dealer~~] during normal business hours to:

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

(3) inspect pesticide packaging, labels, and labeling information for compliance with the Act.

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

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SUBCHAPTER G. PENALTIES

4 TAC §7.70, §7.71

The amendments are proposed pursuant to Section 76.004 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code, and Section 76.1555 of the Code, which allows the Department to assess administrative penalties against those who violate rules adopted under Chapter 76.

The code affected by the proposal is Texas Agriculture Code, Chapter 76.

§7.70. Penalties.

(a) (No change.)

(b) It shall be a violation for a person to distribute restricted-use or state-limited-use pesticides or regulated herbicides without a current pesticide dealer license in accordance with the Act, Subchapter D (relating to Licensing [~~concerning licensing~~] of Dealers [~~dealers~~]).

§7.71. Use Inconsistent with Label Directions.

(a) It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with its label or labeling. Use inconsistent with the label includes, but is not limited to:

(1) applications at sites, rates, concentrations, intervals, or under conditions not specified in the labeled directions, except:

(A) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency;

(B) applying a pesticide against any target pest not specified on the label or labeling if the application is to the crop, animal, or site specified on the labeling, unless the department or EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling after the department or EPA has determined that the use of the pesticide against other pests would cause an unreasonable, adverse effect on the environment;

(C) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling or unless prohibited by law or regulation;

(D) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling;

(E) when a pesticide is applied in conformance with an approved experimental use permit (EUP);

(F) when a pesticide is applied in conformance with an approved emergency exemption granted by EPA to a federal or state agency;

(G) when a pesticide is applied in conformance with an approved special local need [~~Special Local Need~~] registration; and

(H) when a pesticide is applied in any situation receiving prior written approval from EPA;[.]

(2) tank mixing of pesticides, or using application techniques, or equipment prohibited by the label;

(3) failure to observe reentry intervals, preharvest intervals, grazing restrictions, or worker protection requirements:

(A) it is the responsibility of the person in control of the commodity or site treated to be knowledgeable of and comply with the requirements of this paragraph; and

(B) if a commercial applicator furnishes the pesticide, it is the commercial applicator's responsibility to notify the person in control of the commodity or site treated of the requirements of this section that pertain to restricted-entry intervals, preharvest intervals, grazing restrictions, or worker protection requirements, prior to, or at the time of treatment; and[.]

(4) improper storage or disposal of the pesticide or its container.

(b) [~~(5)~~] It [~~it~~] shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with any permit, emergency exemption or special local needs registration issued by the department or EPA.

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 December 16, 2022.

TRD-202205100
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 936-9360

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER B. GENERAL

7 TAC §3.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.37, concerning calculation of annual assessment for banks. The proposed amendment will allow the banking commissioner permissive authority to adjust the calculated annual assessment for inflation (or deflation).

In 2015, §3.37 was amended to add subsection (b) of this section, automatically escalating marginal assessment rates based on the percentage change in the Gross Domestic Product Implicit Price Deflator (GDPIPD) index. This was added to eliminate the need for a large, one-time increase in annual assessments, as had occurred previously. At the time of adoption, the department noted that an increase in the GDPIPD will automatically increase marginal assessment rates but may not necessarily result in a proportionate increase in annual assessments. Thus,

the department anticipated periodically forgiving a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations, specifically with respect to bank and trust supervision.

In every fiscal year since 2015, the department has discounted or forgiven a portion of a state bank's annual assessment because the forgiven revenue was not needed to cover the department's regular operations, as authorized by §3.36(g). In fiscal years 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022, the department reduced the billable annual assessment by 3.3 percent, 2.9 percent, 13.8 percent, 15.6 percent, 20.1 percent, 22.4 percent, 23.8 percent, and 36.4 percent, respectively.

The proposed amendment removes the automatic nature of the GDPIPD adjustment, instead making it a permissive tool to be used by the banking commissioner, as necessary. This would ensure that assessment fees remain in line with the revenue needs of the department.

Dan Frasier, Director of Bank and Trust Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Frasier also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is better matching of the actual cost of regulation with the service provided.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

-- create or eliminate a government program;

-- require the creation of new employee positions or the elimination of existing employee positions;

-- require an increase or decrease in future legislative appropriations to the agency;

-- require an increase or decrease in fees paid to the agency;

-- create a new regulation;

-- expand, limit or repeal an existing regulation;

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

-- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on January 30, 2023. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed pursuant to Texas Finance Code (Finance Code), §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code, §31.106, is affected by the proposed amendment.

§3.37. Calculation of Annual Assessment for Banks.

(a) Bank assessment calculation table. The annual assessment for a state bank is calculated as described in this section and paid as provided by §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table, as such values may be periodically adjusted in the manner provided by subsection (b) of this section. Certain terms used in this section and in the following table are defined in §3.36(b).
Figure: 7 TAC §3.37(a) (No change.)

(b) Adjustments [~~Required adjustments~~] for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Each September 1, the table in subsection (a) of this section, as most recently revised before such date pursuant to this subsection, may be [~~is~~] revised as follows:

(A) each marginal assessment factor listed in Step 3 of the table is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to six decimal places;

(B) the base assessment amount listed in Step 4 for assessable asset group 1 is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars; and

(C) each base assessment amount listed in Step 4 for assessable asset groups 2 through 14 is adjusted to an amount equal to the maximum annual assessment possible for the next lower assessable asset group (without surcharge), rounded to whole dollars. For example, the base assessment amount for assessable asset group 2 is equal to the annual assessment (without surcharge) calculated under assessable asset group 1 for a bank with exactly $10 million in assessable assets.

(2) If the table in subsection (a) of this section is revised for inflation (or deflation), then not [~~Not~~] later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1, and shall provide each state bank with notice of and access to the revised table. At least once every four years, the department shall propose amendments to this section for the purpose of substituting a current revised table in subsection (a) of this section, and for such other purposes as may be appropriate.

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 December 19, 2022.

TRD-202205111
Catherine Reyer
General Counsel
Finance Commission of Texas
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 475-1346

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION
SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.25

The State Board for Educator Certification (SBEC) proposes an amendment to 19 Texas Administrative Code (TAC) §230.25, concerning test exemptions for persons with a hearing impairment. The proposed amendment would create a carve-out for the Science of Teaching Reading (STR) examination, removing the requirement that a candidate be unable to process only written linguistic information to allow an exemption; would remove the requirement that to qualify for an exemption, a person who is already certified in another state and seeking a one-year certificate in Texas must have a recommendation from an SBEC-approved Texas educator preparation program (EPP); and would eliminate the limitation that persons who qualify for an exemption to one certification examination cannot ever take another certification examination unless they have regained their ability to process written linguistic information.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §21.048(b) and (d), require the SBEC to give exemptions from required written examinations for persons with hearing impairments. While TEC, §21.048(d), defines hearing impairment as "so severe that the person cannot process linguistic information with or without amplification," the SBEC has further narrowed the exemption in 19 TAC §230.25(b)(1) to require proof "that the person cannot process written linguistic information."

Since 19 TAC §230.25(b)(1) was last revised, the Texas Legislature has created TEC, §21.048(a-2), which requires that in order to teach Prekindergarten-Grade 6, a person must have passed the STR examination. The STR examination is different from the other certification examinations the SBEC requires, in that it requires the test-taker to listen to recorded speech and phonetic sounds and answer written questions about them. Since this examination requires that test-takers be able to hear and process the linguistic information on the recording without any subtitles or other written translation indicating the errors in the speech, the exemption for individuals who are unable to process only written linguistic information is insufficient to address the difficulty that deaf candidates face when attempting the STR examination. To address this issue, the proposed amendment to §230.25(b)(1) and proposed new §230.25(b)(1)(A) and (B) would create a carve-out for the STR examination, to allow an exemption for any person who is unable to process any linguistic information with or without amplification--not only written linguistic information. The proposed amendment would maintain the requirement that a candidate be unable to process written linguistic information to qualify for an exemption for the other SBEC-required certification examinations, which do not include a listening component that requires interpretation of phonetic sounds.

The proposed amendment to §230.25(b)(2) and (d) removes the requirement that to qualify for an exemption, a person who is already certified in another state and seeking a one-year certificate in Texas in accordance with 19 TAC Chapter 230, Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States, must have a recommendation from an SBEC-approved Texas EPP. This amendment would allow hearing-impaired candidates who have already been vetted and certified in other states to get certified and begin teaching in Texas without incurring the additional time and expense required to get approval from a Texas EPP, which is not required of out-of-state hearing candidates.

The proposed amendment to §230.25(c) creates a relettering of subsections (c) and (d) and eliminates the limitation that persons who qualify for an exemption to one certification examination cannot ever take another certification examination unless they have regained their ability to process written linguistic information. The SBEC initially enacted this prohibition to prevent hearing-impaired persons from attaining certification in areas for which they were not qualified. In practice, however, it prevents qualified hearing-impaired educators from attaining more than one certification and from advancing their careers with administrator certifications. The number of individuals who request an exemption based on hearing impairment averages fewer than 20 annually. Given that Texas certifies approximately 20,000-30,000 educators every year, this small minority of hearing-impaired educators will not significantly harm the Texas education system, even if a few attain certificates through waived examinations for which they are not qualified.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of the state or local governments.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §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 TGC, §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 TGC, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: The Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit regulations in proposed §230.25(b)(1) by allowing individuals with hearing impairment that prevents any type of processing of linguistic information to have an exemption from the STR examination and by allowing out-of-state educators to get one-year certificates in proposed §230.25(b)(2) and (c) without getting a recommendation from a Texas EPP. The proposed rulemaking would also repeal a regulation by removing the provision in current §230.25(c) that forbids hearing-impaired educators from getting an exemption from more than one certification examination.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand 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: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be increased opportunities for hearing-impaired educators and more certified teachers for the Texas students they serve. The TEA staff has determined that there is no anticipated cost to persons required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff 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 December 30, 2022, and ends January 30, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the February 10, 2023 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 30, 2022.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(a),which allows SBEC to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.045(a)(1), which authorizes the SBEC to propose rules necessary to establish standards to govern the continuing accountability of all EPPs based on the following information that is disaggregated with respect to race, sex, and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); TEC, §21.048(a) and (a-2), which state that the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and that all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; and TEC, §21.048(b), (c), and (d),which state that the SBEC may not administer a written examination to an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability and validity for persons with hearing impairments. It defines "hearing impairment" as "so severe that the person cannot process linguistic information with or without amplification;" that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; and that the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.031; 21.041(a) and (b)(1)-(4); 21.045(a)(1); and 21.048(a), (a-2), (b), (c), and (d).

§230.25. Test Exemptions for Persons with a Hearing Impairment.

(a) A candidate who has a hearing impairment may request exemption from educator certification and competence examinations that have not been field-tested for appropriateness, reliability, and validity as applied to persons with hearing impairments.

(b) A request for such an exemption shall include:

(1) a report by a licensed audiologist dated no more than one year from the date of the request for the exemption, addressing the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process linguistic information, and documenting that the candidate has a hearing impairment so severe that : [~~the person cannot process written linguistic information. The report may not be dated more than one year from the date of the request for the exemption and should address the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process written linguistic information; and~~]

(A) for a person requesting an exemption from the Science of Teaching Reading (STR) examination, the person cannot process linguistic information with or without amplification; or

(B) for a person requesting an exemption to an examination other than the STR examination, the person cannot process written linguistic information; and

(2) for candidates who are not seeking certification under Chapter 230, Subchapter H, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), a recommendation for exemption and certification of the candidate by an approved Texas educator preparation program (EPP). The recommendation shall be based on the EPP's determination of the candidate's qualification for the exemption and competency in each certification class and category in which certification is sought. The EPP shall make and document its determination of educator standards competency, as follows:

(A) by reviewing and approving transcripts from an accredited institution of higher education that demonstrate that the candidate has completed 24 semester credit hours in the educator standards, including 12 semester credit hours of upper division coursework, and documenting that the coursework is aligned to the Texas educator standards;

(B) if an EPP uses an alternative assessment to measure competency in any certification class and category in which a certification is being sought, by documenting the method and validity of the means of assessment, the results of the assessment, and the alignment of the assessment to the applicable Texas educator standards; and

(C) for the Texas pedagogy and professional responsibilities examination, by documenting successful completion of EPP coursework and training covering educator standards for the grade level for which certification is sought.

[~~(c) The TEC, §21.048, provides that the SBEC may not administer a certification examination that has not been field-tested for appropriateness, reliability, and validity to a person who is unable to process linguistic information. An educator who has been granted such an exemption may not subsequently take any other such certification examination without submitting a new audiologist's report that addresses the prior audiologist's report and documents that the educator is now able to process written linguistic information.~~]

(c) [~~(d)~~] This section does not affect the procedures for one-year certificates, extensions, and permits based on out-of-state credentials pursuant to §230.113 of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States) [~~, but, to be issued a standard certificate, a person must either satisfy the applicable examination requirements or be recommended for certification by an EPP~~].

(d) [~~(e)~~] As with other EPP completion and admission documentation under §228.40 of this title (relating to Assessment and Evaluation of Candidates for Certification and Program Improvement), all documentation required under this section shall be retained by an EPP for five years and is subject to audit by Texas Education Agency staff.

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

Filed with the Office of the Secretary of State on December 19, 2022.

TRD-202205122

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 475-1497

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1 - 233.3, 233.5, 233.8, 233.10, 233.14, 233.15

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§233.1-233.3, 233.5, 233.8, 233.10, 233.14, and 233.15, concerning categories of classroom teaching certificates. The proposed amendments would remove certificates no longer issued by the SBEC; would strike, where applicable, language referencing deadlines for use of test scores for certificate issuance; would add three new special education certificates into rule; would update language specific to licensure requirements for cosmetology certification; and would propose the addition of a new foreign language certificate to the list of credentials issued by the SBEC. Technical changes would also provide clarification and consistent information related to the classroom teacher certificates issued by the SBEC.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, establish separate certificate categories within the certificate class for the classroom teacher. These categories identify the content area or special population the holder may teach, the grade levels the holder may teach, and the earliest date the certificate may be issued.

Following is a description of the proposed amendments.

§233.1. General Authority.

The proposed amendment in 19 TAC §233.1(e) would delete references to use of test scores for certificate issuance and applicability of catastrophic illness and military service since these provisions are addressed in other SBEC rules. The proposed amendment would also ensure that there is clarity around required tests for certification and deadlines for certificate issuance as reflected in Figure §230.21(e) of 19 TAC Chapter 230, Subchapter C, Assessment of Educators.

§233.2. Early Childhood; Core Subjects.

The proposed amendment in §233.2(b) Core Subjects: Early Childhood-Grade 6 and §233.2(c) Core Subjects: Grades 4-8 certificates would delete these certificate references since they are no longer credentials issued by the SBEC. Proposed amendment in §233.2(d) Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6 certificate would delete references to use of passing scores on Core Subjects examinations and related deadlines for purposes of certificate issuance. The remaining rules in this section will be re-lettered to subsections (b) and (c).

§233.3. English Language Arts and Reading; Social Studies.

The proposed amendment to §233.3(a) English Language Arts and Reading: Grades 4-8 and §233.3(d) English Language Arts and Reading/Social Studies: Grades 4-8 certificates would delete these certificate references since they are no longer issued by the SBEC. The proposed amendment to §233.3(b)

would also delete references to use of passing scores on the 117 ELAR 4-8 TExES examination and related deadlines for purposes of certificate issuance. The remaining rules in this section would be re-lettered to subsections (a)-(h).

§233.5. Technology Applications and Computer Science.

The proposed amendment to §233.5(a) would delete the reference to the Technology Applications: Grades 8-12 certificate that is no longer issued by the SBEC. The remaining rules in this section will be re-lettered to subsections (a) and (b).

§233.8. Special Education.

The proposed amendment would add the following three new special education certificates into rule: §233.8(a), Core Subjects with Science of Teaching Reading/Special Education: Early Childhood-Grade 6; §233.8(b), Deafblind Supplemental: Early Childhood-Grade 12; and §233.8(d), Special Education Specialist: Early Childhood-Grade 12. The proposed addition of these new certificates reflects years of work completed by Texas Education Agency (TEA) staff and stakeholders in developing new special education standards approved by the SBEC and honors the continuing test development work completed by stakeholders and advisory committees. The proposed amendment would also specify that the new special education certificates would be issued by the SBEC no earlier than September 1, 2025, and September 1, 2026, accordingly. The remaining rules in this section would be re-lettered to subsections (c)-(g).

§233.10. Fine Arts.

The proposed amendment to §233.10(d) would delete the Dance: Grades 8-12 certificate that is no longer issued by the SBEC. The remaining rule in this section would be re-lettered to subsection (d).

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area).

The proposed amendment to §233.14(d)(2), Trade and Industrial Education: Grades 6-12 certificate, would provide a technical edit by clarifying the acronym, NOCTI, which refers to the National Occupational Competency Testing Institute. NOCTI's teacher assessments are designed to measure an individual's knowledge of high-level concepts, theories, and applications in specific technical areas and to evaluate individuals with a combination of education, training, and work experiences. The proposed amendment would also update references to the credentials that must be held by a cosmetology teacher (i.e., a valid Cosmetology Operator license or Class A Barber Operator license) and would align with legislation to eliminate the outdated reference to a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

The proposed amendment to §233.14(d)(3) would clarify that individuals seeking initial certification in Trade and Industrial Education: Grades 6-12 certificate, would satisfy the required years of classroom teaching experience on an intern or probationary certificate, and not on an emergency permit. The emergency permit reference would be removed because SBEC rules do not allow the experience serving on that credential to count towards completion of EPP preparation and certification requirements for licensure. This amendment aligns with other SBEC rules and does not reflect a change in procedures.

§233.15. Languages Other Than English.

Proposed new §233.15(a)(14), Tamil: Early Childhood-Grade 12, would add a new foreign language certificate area to the list of certificates to be issued by the SBEC no earlier than September 1, 2025. The addition of the Tamil certificate would address a petition for a new certificate area from 2018 and would align with the certification examination and corresponding implementation date being added as a proposed amendment to Figure: 19 TAC §230.21(e), in a separate discussion item 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter A, General Provisions, and Subchapter C, Assessment of Educators, presented to the SBEC at its December 2022 meeting. The proposed deletion of §233.15(15), Urdu: Early Childhood-Grade 12, would remove this credential from the list of certificates issued by the SBEC as standards or test development activities were never initiated for this certificate area. The remaining rules would be renumbered to paragraphs (15) and (16).

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of the state or local governments.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §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 TGC, §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 TGC, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be the continued issuance of classroom teaching certificates to eligible individuals. The TEA staff has determined that there is no anticipated cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff 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 December 30, 2022, and ends January 30, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the February 10, 2023 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the Texas Register on December 30, 2022.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); TEC, §21.0442, which requires the SBEC to create an abbreviated educator preparation program (EPP) for trade and industrial workforce training; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; TEC, §21.048(a-2), which requires the SBEC to adopt rules to require individuals teaching any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading; TEC, §21.0487, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps teaching certificate; TEC, §21.0489, which requires the SBEC to create a Prekindergarten-Grade 3 certificate; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4) and (6); 21.044(e) and (f); 21.0442; 21.048(a) and (a-2); 21.0487; 21.0489; 21.0491; and 22.0831(f)(1) and (2).

§233.1. General Authority.

(a) In this chapter, the State Board for Educator Certification establishes separate certificate categories within the certificate class for the classroom teacher established under §230.33 of this title (relating to Classes of Certificates).

(b) For purposes of authorizing a person to be employed by a school district under the Texas Education Code, §21.003(a), a certificate category identifies:

(1) the content area or the special student population the holder may teach;

(2) the grade levels the holder may teach; and

(3) the earliest date the certificate may be issued.

(c) Unless provided otherwise in this title, the content area and grade level of a certificate category as well as the standards underlying the certification examination for each category are aligned with the Texas Essential Knowledge and Skills curriculum adopted by the State Board of Education.

(d) A category includes both a standard certificate and the related emergency or temporary credential. A category may comprise a standard base certificate or a supplemental certificate. A supplemental certificate may be issued only to a person who already holds the appropriate standard base certificate.

(e) A person must satisfy all applicable requirements and conditions under this title and other law to be issued a certificate in a category. A person seeking an initial standard certification must pass the appropriate examination(s) as prescribed in §230.21 of this title (relating to Educator Assessment). [~~A person completing requirements for an initial standard certificate using a score on an examination that has been eliminated must apply and pay for the certification and be recommended by an educator preparation program by the deadline specified in this chapter to be eligible for issuance of the certificate. Exceptions may be granted for a period of two years after the elimination of the examination for catastrophic illness of the educator or an immediate family member or military service of the applicant.~~]

(f) If the governor declares a state of disaster consistent with the Texas Government Code, §418.014, Texas Education Agency staff may extend deadlines in this chapter for up to 90 days as necessary to accommodate persons in the affected disaster areas.

(g) The general assignment descriptions in this chapter, where applicable, are subject to the specific provisions for the assignment of

a holder of a certificate in Chapter 231 of this title (relating to Requirements for Public School Personnel Assignments), and in the event of any conflict with this chapter, Chapter 231 of this title shall prevail.

§233.2. Early Childhood; Core Subjects.

(a) Early Childhood: Prekindergarten-Grade 3. The Early Childhood: Prekindergarten-Grade 3 certificate may be issued no earlier than January 1, 2020.

~~[(b) Core Subjects: Early Childhood-Grade 6. The Core Subjects: Early Childhood-Grade 6 certificate may be issued no earlier than January 1, 2015, and no later than December 31, 2020.]~~

~~[(c) Core Subjects: Grades 4-8. The Core Subjects: Grades 4-8 certificate may be issued no earlier than January 1, 2015, and no later than December 31, 2020.]~~

(b) [~~(d)~~] Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6. The Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6 certificate may be issued no earlier than January 1, 2021. [~~The certificate may be issued on the basis of a passing score on the 291 Core Subjects EC-6 TExES examination no later than December 30, 2022. The certificate may be issued on the basis of a passing score on the 391 Core Subjects EC-6 TExES examination no earlier than January 1, 2021.~~]

(c) [~~(e)~~] Core Subjects with Science of Teaching Reading: Grades 4-8. The Core Subjects with Science of Teaching Reading certificate: Grades 4-8 may be issued no earlier than January 1, 2021.

§233.3. English Language Arts and Reading; Social Studies.

~~[(a) English Language Arts and Reading: Grades 4-8. The English Language Arts and Reading: Grades 4-8 certificate may be issued no earlier than September 1, 2002, and no later than December 31, 2020.]~~

(a) [~~(b)~~] English Language Arts and Reading with Science of Teaching Reading: Grades 4-8. The English Language Arts and Reading: Grades 4-8 certificate may be issued no earlier than January 1, 2021. [~~The certificate may be issued on the basis of a passing score on the 117 ELAR 4-8 TExES examination no later than October 30, 2022.~~]

(b) [~~(c)~~] Social Studies: Grades 4-8. The Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002.

~~[(d) English Language Arts and Reading/Social Studies: Grades 4-8. The English Language Arts and Reading/Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002, and no later than December 31, 2020.]~~

(c) [~~(e)~~] English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8. The English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8 certificate may be issued no earlier than January 1, 2021.

(d) [~~(f)~~] English Language Arts and Reading: Grades 7-12. The English Language Arts and Reading: Grades 7-12 certificate may be issued no earlier than September 1, 2013.

(e) [~~(g)~~] Social Studies: Grades 7-12. The Social Studies: Grades 7-12 certificate may be issued no earlier than September 1, 2013.

(f) [~~(h)~~] History: Grades 7-12. The History: Grades 7-12 certificate may be issued no earlier than September 1, 2013.

(g) [~~(i)~~] Journalism: Grades 7-12. The Journalism: Grades 7-12 certificate may be issued no earlier than September 1, 2013.

(h) [~~(j)~~] Speech: Grades 7-12. The Speech: Grades 7-12 certificate may be issued no earlier than November 1, 2010.

§233.5. Technology Applications and Computer Science.

~~[(a) Technology Applications: Grades 8-12. The Technology Applications: Grades 8-12 certificate may be issued no earlier than June 1, 2001. A candidate must meet the requirements for a Technology Applications: Grades 8-12 certificate by August 31, 2018. All applications must be complete and received by the Texas Education Agency by October 30, 2018.]~~

(a) [~~(b)~~] Technology Applications: Early Childhood-Grade 12. The Technology Applications: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2002.

(b) [~~(c)~~] Computer Science: Grades 8-12. The Computer Science: Grades 8-12 certificate may be issued no earlier than June 1, 2001.

§233.8. Special Education.

(a) Core Subjects with Science of Teaching Reading/Special Education: Early Childhood-Grade 6. The Core Subjects with Science of Teaching Reading/ Special Education: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2026.

(b) Deafblind Supplemental: Early Childhood-Grade 12. The Deafblind: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2025.

(c) [~~(a)~~] Special Education: Early Childhood-Grade 12. The Special Education: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2003.

(d) Special Education Specialist: Early Childhood-Grade 12. The Special Education Specialist: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2025.

(e) [~~(b)~~] Special Education Supplemental. The Special Education Supplemental certificate may be issued no earlier than September 1, 2003.

(f) [~~(c)~~] Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12. The Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005.

(g) [~~(d)~~] Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12. The Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005.

§233.10. Fine Arts.

(a) Music: Early Childhood-Grade 12. The Music: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2004.

(b) Art: Early Childhood-Grade 12. The Art: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005.

(c) Theatre: Early Childhood-Grade 12. The Theatre: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005.

~~[(d) Dance: Grades 8-12. The Dance: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Dance: Grades 8-12 certificate is eligible to teach all dance courses in Grades 8-12. A candidate must meet the requirements for a Dance: Grades 8-12 certificate by August 31, 2018. All applications must be complete and received by the Texas Education Agency by October 30, 2018.]~~

(d) [~~(c)~~] Dance: Grades 6-12. The Dance: Grades 6-12 certificate may be issued no earlier than March 1, 2017.

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area).

(a) All individuals seeking a career and technical education certificate specified in this section must have the required number of years of qualified work experience and preparation in a skill area approved in accordance with the provisions of subsection (f) of this section prior to issuance of the certificate and assignment in a Texas school.

(b) Marketing: Grades 6-12. The Marketing: Grades 6-12 certificate may be issued no earlier than September 1, 2014. A candidate for the Marketing: Grades 6-12 certificate must:

(1) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board (THECB) [~~THECB~~] ; and

(2) have two years of full-time wage-earning experience in a marketing occupation as specified in subsection (f) of this section.

(c) Health Science: Grades 6-12 certificate. The standard Health Science: Grades 6-12 certificate may be issued no earlier than September 1, 2014. A standard Health Science: Grades 6-12 certificate shall be based on experience and academic preparation in the skill area and require the following:

(1) an associate or more advanced degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB;

(2) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner; and

(3) approval, by the certification officer of an approved educator preparation program (EPP) [~~EPP~~] , of two years of full-time wage-earning experience using the licensure requirement described in paragraph (2) of this subsection.

(d) Trade and Industrial Education: Grades 6-12 certificate. The certificate may be issued no earlier than September 1, 2014. A standard Trade and Industrial Education: Grades 6-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training.

(1) The standard Trade and Industrial Education: Grades 6-12 certificate shall require the following academic preparation and wage-earning experience.

(A) Option I. An individual must:

(i) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(C) Option III. An individual must:

(i) hold a high school diploma or the equivalent; and

(ii) have five years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(2) The standard Trade and Industrial Education: Grades 6-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing the appropriate National Occupational Competency Testing Institute (NOCTI) [~~NOCTI~~] assessment is required. A cosmetology teacher must hold a valid Cosmetology Operator license or Class A Barber Operator license. [~~A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.~~]

(3) An individual seeking initial certification as a teacher and completing requirements through an EPP must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of Part 2 of this title (relating to Commissioner's Rules on Creditable Years of Service), on an intern [~~emergency permit~~] or probationary certificate in the specific area of trade and industrial education.

(4) The holder of a standard or provisional Trade and Industrial Education: Grades 6-12 certificate or Vocational Trades and Industry certificate may be approved for additional trade and industrial education assignments provided he or she meets the required number of years of wage-earning experience as indicated in this subsection. Work experience must be approved according to the provisions of this subsection. The EPP must submit a statement of qualifications to the Texas Education Agency [~~TEA~~] within 60 calendar days of approval.

(e) Trade and Industrial Workforce Training: Grades 6-12 certificate. The certificate may be issued no earlier than September 1, 2018. A standard Trade and Industrial Workforce Training: Grades 6-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training.

(1) The standard Trade and Industrial Workforce Training: Grades 6-12 certificate shall require all of the following academic preparation and wage-earning experience.

(A) An individual must have been issued a high school diploma or its equivalent or a postsecondary credential, certificate or degree.

(B) An individual must have seven years of full-time wage-earning experience within the preceding 10 years in an approved occupation for which instruction is offered, and have not been the subject of a complaint filed with a licensing entity or other agency that

regulates the occupation of the person, other than a complaint that was determined baseless or unfounded by that entity or agency.

(C) An individual must hold with respect to that occupation a current license, certificate, or registration, as applicable, issued by a nationally recognized accrediting agency based on a recognized test or measurement.

(2) The standard Trade and Industrial Workforce Training: Grades 6-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement.

(f) Career and technical education certificates. Approval of career and technical education certificates in this section shall be based on prior experience and preparation in a skill area.

(1) Prospective career and technical education teachers shall submit a statement of qualifications detailing prior experience and skill area preparation to the EPP approved to prepare teachers for the career and technical education certificate sought. The certification officer of the EPP shall review the applicant's statement of qualifications to determine whether the applicant meets the appropriate approval criteria specified in this subsection. In the case of an educator who otherwise qualifies for certification by examination in Marketing: Grades 6-12, Health Science: Grades 6-12, or Trade and Industrial Education: Grades 6-12, the review and approval of required work experience may be performed by a certified school administrator.

(2) Under this subsection, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40 hours, but at least 20 hours per week, shall be calculated at a 50% rate in determining years of full-time experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time experience.

(3) Postsecondary and proprietary school teaching experience in the specific occupational area for which the candidate is seeking certification may be counted on a year-for-year basis in lieu of on-the-job experience. Proprietary schools must be accredited or otherwise approved by the Texas Workforce Commission. Recency of experience requirements must be met, as well as current licensure, certification, or registration by a state or nationally recognized accrediting agency.

§233.15. Languages Other Than English.

(a) The State Board for Educator Certification (SBEC) shall issue languages other than English (LOTE) certificates in the following areas:

(1) American Sign Language: Early Childhood-Grade 12. The American Sign Language: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005.

(2) Arabic: Early Childhood-Grade 12. The Arabic: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007.

(3) Chinese: Early Childhood-Grade 12. The Chinese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007.

(4) French: Early Childhood-Grade 12. The French: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009.

(5) German: Early Childhood-Grade 12. The German: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009.

(6) Hindi: Early Childhood-Grade 12. The Hindi: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010.

(7) Italian: Early Childhood-Grade 12. The Italian: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010.

(8) Japanese: Early Childhood-Grade 12. The Japanese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007.

(9) Korean: Early Childhood-Grade 12. The Korean: Early Childhood-Grade 12 certificate may be issued no earlier than June 1, 2016.

(10) Latin: Early Childhood-Grade 12. The Latin: Early Childhood-Grade 12 certificate may be issued no earlier than January 1, 2010.

(11) Portuguese: Early Childhood-Grade 12. The Portuguese: Early Childhood-Grade 12 certificate may be issued no earlier than June 1, 2016.

(12) Russian: Early Childhood-Grade 12. The Russian: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007.

(13) Spanish: Early Childhood-Grade 12. The Spanish: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009.

(14) Tamil: Early Childhood-Grade 12. The Tamil: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2025.

(15) [~~(14)~~] Turkish: Early Childhood-Grade 12. The Turkish: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010.

[~~(15) Urdu: Early Childhood-Grade 12. The Urdu: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010.~~]

(16) Vietnamese: Early Childhood-Grade 12. The Vietnamese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007.

(b) An interested party may request an additional LOTE certificate using the petition process described in §250.20 of this title (relating to Petition for Adoption of Rules or Rule Changes) for SBEC consideration. The petitioner must provide:

(1) the desired LOTE certificate and confirmation of the number of students likely to receive instruction in the requested language;

(2) the number of individuals interested in adding a certification in the new language; and

(3) the rationale for the request and anticipated benefit to students.

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 December 19, 2022.

TRD-202205124

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 475-1497

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CHAPTER 239. STUDENT SERVICES CERTIFICATES

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§239.40, 239.45, 239.55, 239.60, 239.65, 239.90, 239.91, and 239.92, new §239.93-239.95, and the repeals of §§239.70 and 239.93-239.95, concerning student services certificates. The proposed revisions would update the standards for the School Librarian and Reading Specialist certificates, would provide timelines for transitions for both certificates to the new standards for preparation purposes, and would provide technical edits as necessary. The proposed revisions reflect feedback provided by the SBEC-appointed advisory committees for the School Librarian and Reading Specialist certificates.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 239, Subchapter B, School Librarian Certificate, and Subchapter D, Reading Specialist Certificate, establish the requirements and standards for the School Librarian and Reading Specialist certificates.

At the April 2021 SBEC meeting, the Board appointed educator standards advisory committees to review and make recommendations for updated educator standards for the School Librarian and Reading Specialist certificates. The SBEC-appointed advisory committees were convened to provide feedback on the current rules and processes related to the standards for both certificate areas. Texas Education Agency (TEA) staff updated the SBEC on the activities completed by both advisory committees and provided a high-level overview of key issues relevant to each certificate as part of the discussion item at the July 22, 2022 SBEC meeting. Further, TEA staff presented proposed changes to 19 TAC Chapter 239, Subchapters B and D, as part of the discussion item. The changes include the updated standards based on the feedback from the SBEC-appointed School Librarian and Reading Specialist Advisory Committees, along with transition dates for the new certificates and technical updates. The names of members of the School Librarian Standards Advisory Committee and the Reading Specialist Advisory Committee, the timeline of actions for both committees, and the lists for the SBEC-approved educator preparation programs (EPPs) for the School Librarian and the Reading Specialist certificates were presented to the SBEC at its meeting.

Following is a description of the proposed revisions that reflects the feedback from the SBEC-appointed School Librarian and Reading Specialist Advisory Committees.

Subchapter B. School Librarian Certificate.

§239.55. Standards Required for the School Librarian Certificate.

The proposed amendment to §239.55(b) would clarify that the required educator standards for the School Librarian certificate outlined in subsection (b) apply to an applicant who is admitted to an educator preparation program (EPP) before September 1, 2026, and would renumber the current educator standards. These changes would provide a transition period for the current educator standards for the Reading Specialist certificate.

The proposed new §239.55(c) would clarify that the required educator standards for the School Librarian certificate outlined in subsection (c) apply to an applicant who is admitted to an EPP on or after September 1, 2026. These changes would provide a transition period for the current educator standards. The proposed subsection would reflect the recommendations of the educator standards advisory committee, would reinforce best practices captured in the Texas State Library and Archives Commission standards; would align to recent updates made to the English Language Arts and Reading (ELAR) Texas Essential Knowledge and Skills (TEKS); would capture the critical role that technology plays in the school librarian's responsibilities; and would reflect the range of roles, responsibilities, and experiences of the school librarian influenced by the growing and changing needs of schools across the state.

The proposed new §239.55(c)(1) would create a new Standard I to specify the standards needed to demonstrate knowledge, skills, and dispositions related to information literacy. Standard I would outline the school librarian's ability to apply knowledge of providing information literacy instruction that enables educators, learners, and other school stakeholders to efficiently locate, accurately evaluate, ethically use, and clearly communicate information in various formats across all grade levels.

The proposed new §239.55(c)(2) would create new Standard II to specify the standards needed to demonstrate the knowledge, skills, and dispositions related to inquiry and inquiry-based instruction. Standard II would outline the school librarian's ability to apply knowledge of creating a culture of inquiry, which includes the pursuit, creation, and sharing of knowledge, as well as support for both student and professional learning.

The proposed new §239.55(c)(3) would create new Standard III to specify the standards needed to demonstrate the knowledge, skills, and dispositions related to promoting a culture of reading across all grade levels. Standard III would outline the school librarian's ability to apply knowledge of promoting reading for learning, personal growth, and enjoyment, which are essential skills for college, career, and community.

The proposed new §239.55(c)(4) would create new Standard IV to specify the standards needed to demonstrate knowledge, skills, and dispositions related to digital learning. Standard IV would outline the school librarian's ability to apply knowledge of supporting and advocating for equitable access to current and emerging technologies, providing curated and open access to a variety of resources, and modeling best instructional practices informed by International Society for Technology in Education (ISTE) Standards for Educators and curriculum standards.

The proposed new §239.55(c)(5) would create new Standard V to specify the standards needed to demonstrate knowledge, skills, and dispositions related to cultivating a safe and nurturing learning environment. Standard V would outline the school librarian's ability to apply knowledge of developing and maintaining the library as an essential, safe, and flexible environment that is an inviting, shared space for teaching, learning, and personal exploration.

The proposed new §239.55(c)(6) would create new Standard VI to specify the standards needed to demonstrate knowledge, skills, and dispositions related to leadership. Standard VI would outline the school librarian's ability to apply knowledge of proactively collaborating, planning, and engaging in leadership

activities for various purposes (in collaboration with teachers, principals, school counselors, reading specialists, instructional coaches, instructional technologists, and/or curriculum specialists) to model and lead research-based best practices across campus, district, and professional communities, as well as seek professional growth opportunities.

§239.65. Requirements to Renew the Standard School Librarian Certificate.

The proposed amendment to §239.65 would reflect current requirements for the renewal of a School Librarian certificate regarding compliance with the provisions in 19 TAC Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements. The proposed amendment would also strike outdated language and provide a technical edit to the certificate naming convention.

§239.70. Transition and Implementation Dates.

The proposed repeal of §239.70 would remove outdated language concerning transition and implementation dates. The proposed amendment to §239.55(b) and (c) would prescribe the transition dates necessary to provide clarity of when each set of standards would be utilized for candidates depending on admission date.

The proposed amendments would provide a technical edit to the certificate naming convention in §§239.40, 239.45, and 239.60 and a technical edit to a commissioner rule reference.

Subchapter D. Reading Specialist Certificate.

§239.92. Preparation Program Requirements.

The proposed amendment to §239.92 would add a cross-reference to the proposed amendment to §239.93, Standards Required for Reading Specialist Certificate, to clarify that the EPP requirements must be aligned to the Reading Specialist certificate standards.

§239.93. Requirements for the Issuance of the Reading Specialist Certificate.

The current §239.93, Requirements for the Issuance of the Reading Specialist Certificate, is proposed to be repealed and replaced with proposed new §239.93, Standards Required for a Reading Specialist Certificate. Current §239.93 is proposed to be recodified with changes as §239.94, Requirements for the Issuance of a Reading Specialist Certificate.

Proposed new §239.93(a) would require that EPPs use the knowledge and skills in proposed new §239.93(b) and (c) as the basis for curriculum and course work and that the SBEC use them as the basis for the Reading Specialist certification examination and for continuing education for Reading Specialists.

Proposed new §239.93(b) would clarify that the required educator standards for the Reading Specialist certificate outlined in subsection (b) apply to an applicant who is admitted to an EPP before September 1, 2026, and would reflect the current educator standards. These changes would provide a transition period for the current educator standards for the Reading Specialist certificate.

Proposed new §239.93 would clarify that the required educator standards for the Reading Specialist certificate outlined in subsection (c) apply to an applicant who is admitted to an EPP on or after September 1, 2026. These changes would provide a transition period for the current educator standards. The proposed new standards would reflect the recommendations of the educator standards advisory committee and would ensure alignment with and representation of current realities within Texas classrooms and schools, as well as statewide priorities regarding literacy, literacy instruction, and literacy support. Specifically, the proposed new educator standards for the Reading Specialist certificate emphasize the interconnected nature of reading and writing; highlight the need for literacy support throughout all levels of schooling; reflect the need for Reading Specialists to be seen as campus and district leaders; align to Reading Academies, the Science of Teaching Reading standards, and updates made to the ELAR TEKS and content, respectively; reflect a wide range of experiences and responsibilities regarding the Reading Specialist role across the state; and capture a wide variety of diverse literacy support needs throughout Texas campuses and districts at large.

Proposed new §239.93(c)(1) would create new Standard I to specify the standards needed to demonstrate the knowledge, skills, and dispositions related to reading foundations, curriculum, and instruction. Standard I would outline the reading specialist's ability to apply advanced knowledge of literacy foundations and development, which include the interrelatedness of oral and written language (reading, writing, listening, speaking, thinking) to collaborate, develop, lead, and advocate for learning experiences in response to the diverse needs (cultural, linguistic, educational) of students and other stakeholders (Early Childhood-Grade 12 (EC-12) teachers, district administrators, parents) regarding the topics of oral foundations of reading development, phonological and phonemic awareness, print concepts and alphabetic knowledge, orthography: phonics, morphology, and etymology, reading fluency, comprehension, vocabulary, and writing to model and support evidence- and research-based best practices.

Proposed new §239.93(c)(2) would create new Standard II to specify the standards needed to demonstrate the knowledge, skills, and dispositions related to assessment. Standard II would outline the reading specialist's ability to apply advanced knowledge of foundational concepts, principles, and evidence-based practices related to literacy assessment; a variety of literacy assessments and uses in order to identify, administer, and analyze assessments; using assessment data to produce both written and oral reports to inform instruction, intervention, and curriculum decisions; how to effectively communicate both written and orally in order to disseminate assessment results for all stakeholders; how to interpret assessment results identifying strengths and needs for instructional decision making (campus, grade level, teacher, and individual student); delays or differences in language and literacy development and when it warrants referral for additional evaluation or intervention; and the importance of selecting and using texts and tests that reflect a diversity of cultures and linguistic backgrounds, including the diversity of the classroom, school community, and society.

Proposed new §239.93(c)(3) would create new Standard III to specify the standards needed to demonstrate the knowledge, skills, and dispositions related to learner needs and support. Standard III would outline the reading specialist's ability to apply advanced knowledge of emergent bilingualism and the transfer from heritage language to additional language(s); advocacy and pedagogy for diverse and exceptional learners; differentiation, management, routines, and accessibility for literate and inclusive learning environments; the importance of including mental health wellness within the context of literacy instruction; state and federal laws, regulations, and guidelines regarding assessment and provision of services for learners with learning differences/ex-

ceptionalities (i.e., marginalized learners, dyslexia, dysgraphia, literacy difficulties/disabilities, twice-exceptional, etc.).

Proposed new §239.93(c)(4) would create new Standard IV to specify the standards needed to demonstrate the knowledge, skills, and dispositions related to professional leadership and development. Standard IV would outline the reading specialist's ability to apply advanced knowledge of theories of shared leadership and coaching with educational stakeholders, ethical responsibilities and the reading specialist's role in a campus/district and impact on all stakeholders, and adult learning theories and professional development models.

§239.94. Requirements to Renew the Standard Reading Specialist Certificate.

The current §239.94, Requirements to Renew the Standard Reading Specialist Certificate, is proposed to be repealed and replaced with proposed new §239.94, Requirements for the Issuance of the Reading Specialist Certificate. Current §239.94 is proposed to be recodified with changes as proposed new §239.95, Requirements to Renew the Standard Reading Specialist Certificate.

Proposed new §239.94 codifies and amends provisions currently in §239.93, Requirements for the Issuance of the Reading Specialist Certificate. The proposed new rule would set out the current requirements that an individual complete a program that aligns with the educator standards for that certificate, successfully complete the exam, hold a master's degree, and have two creditable years of teaching experience as a classroom teacher. The proposed new rule would also add a reference to proposed new §239.93, Standards for a Reading Specialist Certificate, to clarify the standards that EPPs are expected to implement.

§239.95. Requirements to Renew the Standard Reading Specialist Certificate.

Proposed new §239.95 recodifies and amends provisions currently in §239.94, Requirements to Renew the Standard Reading Specialist Certificate. The proposed new section would reflect current requirements for the renewal of a Reading Specialist certificate regarding compliance with the provisions in 19 TAC Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements. The proposed new subsection would also strike outdated language.

§239.95. Transition and Implementation Dates.

The proposed repeal of §239.95 would remove outdated language. The proposed amendment to §239.93(b) and (c) would prescribe the transition dates necessary to provide clarity of when each set of standards would be utilized for candidates depending on admission date.

The proposed amendment would provide a technical edit to the certificate naming convention in §239.90 and §239.91.

Next Steps: Following SBEC's approval of the proposed rule text, TEA staff will provide adequate and timely communication regarding examination transition dates with the goal of ensuring that candidates are prepared by the new standards for each field. The table below represents the anticipated timeline for the transitions of both the School Librarian and Reading Specialist certificates.

Figure: 19 TAC Chapter 239 – Preamble

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years that the rule will be in effect that enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of the state or local governments.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §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 TGC, §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 TGC, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: The 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 new regulations and repeal regulations. The proposal would repeal §239.65(a) and (c) and §239.70 because they are out of date and no longer relevant, §239.93 because it would be recodified as proposed new §239.94, §239.94 because it is in part out of date and in part to be recodified as proposed new §239.95, and §239.95 because it is out of date and no longer relevant. The proposal would create new regulations in proposed new §239.93, which consolidates and clarifies the standards for a Reading Specialist Certificate; §239.94, which would recodify existing §239.93, and §239.95, which would recodify the continuing provisions of existing §239.94.

The proposal 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 or limit 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: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be more rigorous requirements for the preparation, certification, testing, and renewal of school librarians and reading specialists that result in highly effective certified school librarians and reading specialists upon entry into the profession and retention of these qualified professionals. The TEA staff has determined there is no anticipated cost to persons required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff 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 December 30, 2022, and ends January 30, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the February 10, 2023 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 30, 2022.

SUBCHAPTER B. SCHOOL LIBRARIAN CERTIFICATE

19 TAC §§239.40, 239.45, 239.55, 239.60, 239.65

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(2), which requires the SBEC to appoint an advisory committee composed of members of each class of certificate to recommend standards for that class to the Board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1)-(4), which require the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certification examination and each core subject covered by the generalist certification examination; and TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.031(a); 21.040(2); 21.041(a); 21.041(b)(1)-(4); 21.044; 21.048(a); and 21.054.

§239.40. General Provisions.

(a) Because the school librarian plays a critical role in campus effectiveness and student achievement, the rules adopted by the State Board for Educator Certification in this subchapter ensure that each candidate for the School Librarian certificate [~~Certificate~~] is of the highest caliber and possesses the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) An individual serving as a school librarian is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

(c) The holder of the School Librarian certificate [~~Certificate~~] issued under the provisions of this subchapter may serve as a librarian in Prekindergarten-Grade 12.

§239.45. Minimum Requirements for Admission to a School Librarian Preparation Program.

(a) Prior to admission to an educator preparation program leading to the School Librarian certificate [~~Certificate~~], an individual must:

(1) hold a baccalaureate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) meet the requirements for admission to an educator preparation program under Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates).

(b) An educator preparation program may adopt requirements for admission in addition to those required under subsection (a) of this section.

§239.55. Standards Required for the School Librarian Certificate.

(a) School Librarian Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program in the development of curricula and coursework and by the State Board for Educator Certification as the basis for developing the examination required to obtain the School Librarian Certificate. The standards also serve as the foundation for the professional growth plan and continuing professional education activities required by §239.65 of this title (relating to Requirements to Renew the Standard School Librarian Certificate).

(b) Required standards for an applicant who is admitted to an educator preparation program for the School Librarian certificate before September 1, 2026:

(1) Standard I. Learner-Centered Teaching and Learning: The certified school librarian is an educational leader who promotes the integration of curriculum, resources, and teaching strategies to ensure the success of all students as the effective creators and users of ideas and information, enabling them to become lifelong learners. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(A) [~~(1)~~] participate as an educational leader, an equal partner, and a change agent in the curriculum development process at both the school campus and school district levels;

(B) [~~(2)~~] participate in curriculum design and integrated planning of a shared school campus vision that focuses on reading, teaching, and learning;

(C) [~~(3)~~] model and promote collaborative planning, cooperative teaching, and direct instruction as determined by learners' needs and state curriculum standards;

(D) [~~(4)~~] direct and encourage students in the ethical use of resources to locate, gather, select, synthesize, and evaluate relevant information;

(E) [~~(5)~~] work collaboratively with faculty to provide students with opportunities to assume responsibility for planning and engaging in independent learning;

(F) [~~(6)~~] adapt teaching strategies to accommodate the diverse learning needs of the student population;

(G) [~~(7)~~] provide and promote ongoing staff development for the learning community, particularly in the areas of integration of information technology, information literacy, and literature appreciation;

(H) [~~(8)~~] provide and promote ongoing learning opportunities for students, particularly in the areas of integration of information technology and information literacy;

(I) [~~(9)~~] direct and encourage students to read a variety of fiction and nonfiction resources for personal and informational needs;

(J) [~~(10)~~] understand and evaluate national, state, and local reading initiatives;

(K) [~~(11)~~] create a learning environment in which the diversity of groups and the uniqueness of individuals are recognized and appreciated; and

(L) [~~(12)~~] provide instructional access to library resources and facilities through open, flexible scheduling for classes, small groups, and individuals.

(2) [~~(c)~~] Standard II. Learner-Centered Library Program Leadership and Management: The certified school librarian is an educational leader who promotes the success of all students by acquiring, organizing, and managing information for use in a creative and exemplary library program. Accordingly, the certified school librarian is a leader and manager who must be able to do the following activities with understanding and valuation of their importance:

(A) [~~(1)~~] advocate for the development of an exemplary library media program that encourages a vision of excellence for all learners;

(B) [~~(2)~~] synthesize information from a variety of sources for effective decision making to develop and maintain an exemplary library program;

(C) [~~(3)~~] design policies and procedures that comply with local, state, and federal laws and policies while supporting sound decisions relating to school and library instruction and programs;

(D) [~~(4)~~] establish partnerships within the learning community to support school district and school campus goals through exemplary library programs;

(E) [~~(5)~~] demonstrate effective leadership strategies while working within school campus and school district administrative structures to promote achievement of library program goals;

(F) [~~(6)~~] employ effective interpersonal communication skills;

(G) [~~(7)~~] implement effective strategies and techniques to systematically perform library management operations such as budgeting; purchasing; scheduling; managing and maintaining facilities and resources; supervising adults and children; reporting; grant writing; and overseeing circulation and inventory;

(H) [~~(8)~~] collaborate with faculty to ensure that the process of evaluating and selecting library resources provides curriculum-related and leisure reading materials;

(I) [~~(9)~~] design and implement acceptable use policies for current and emerging technologies;

(J) [~~(10)~~] use effective planning, time management, and organization of work to maximize attainment of district and campus goals through exemplary library programs; and

(K) [~~(11)~~] monitor, assess, and employ existing and emerging technologies for management applications.

(3) [~~(d)~~] Standard III. Learner-Centered Technology and Information Access: The certified school librarian is an educational leader who promotes the success of all students by facilitating the use and integration of technology, telecommunications, and information systems to enrich the curriculum and enhance learning. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(A) [~~(1)~~] provide a balanced, carefully selected, and systematically organized collection of library resources that are sufficient to meet students' needs and are continuously monitored to be current and relevant in each subject area;

(B) [~~(2)~~] model and promote the highest standard of conduct, ethics, and integrity in the use of the Internet and other print and electronic resources;

(C) [~~(3)~~] employ existing and emerging technologies to access, evaluate, and disseminate information for possible application to instructional programs;

(D) [~~(4)~~] promote interlibrary loan policy to facilitate information access beyond the campus;

(E) [~~(5)~~] model information problem-solving processes in providing instruction about reference and research techniques; and

(F) [~~(6)~~] participate in state and national technology initiatives.

(4) [~~(e)~~] Standard IV. Learner-Centered Library Environment: The school librarian is an educational leader who promotes the success of all students by establishing a climate in the library that enables and encourages all members of the learning community to explore and meet their information needs. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(A) [~~(1)~~] understand the principles of exemplary library design as defined by state and federal guidelines for a simultaneous-use facility for individuals, small groups, and classes;

(B) [~~(2)~~] develop and maintain a flexible, functional, and barrier-free library facility that conforms to national and state library standards;

(C) [~~(3)~~] provide a safe, secure environment that is age appropriate;

(D) [~~(4)~~] maximize available space to permit displays of student-, faculty- and community-produced materials and collections; and

(E) [~~(5)~~] promote access to resources and information during and beyond the instructional day and school year.

(5) [~~(f)~~] Standard V. Learner-Centered Connections to the Community: The school librarian is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and fostering the use of community resources. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(A) [~~(1)~~] promote awareness of and responsiveness to learning differences and other types of diversity in the learning community;

(B) [~~(2)~~] exhibit effective communication through oral, written, electronic, and nonverbal expression;

(C) [~~(3)~~] implement strategies for effective internal and external communications;

(D) [~~(4)~~] establish partnerships with businesses, learning institutions, global communities, and other libraries and entities to strengthen programs and support school campus goals;

(E) [~~(5)~~] develop library programs that offer families opportunities to participate in school activities and in their children's education;

(F) [~~(6)~~] advocate access to resources and information during and beyond the instructional day and school year; and

(G) [~~(7)~~] develop and implement a comprehensive program of community relations that uses strategies to effectively involve and inform multiple constituencies, including the news media.

(6) [~~(g)~~] Standard VI. Learner-Centered Information Science and Librarianship: As an educational leader, the certified school librarian uses his or her unique knowledge base, drawing from both education and library science, to promote the success of all students and to provide experiences that help learners locate, evaluate, and use information to solve problems while becoming lifelong readers and learners. Accordingly, the certified school librarian must be able to do the following activities with understanding and valuation of their importance:

(A) [~~(1)~~] understand the role of all types of libraries and information agencies in an integrated learning environment;

(B) [~~(2)~~] understand the role of the school library media program as a central element in the intellectual life of the school;

(C) [~~(3)~~] know theories, principles, and skills related to the selection, acquisition, organization, storage, retrieval, use, and evaluation of information;

(D) [~~(4)~~] implement standard library procedures for classifying, cataloging, and processing various resources that facilitate computerization and resource sharing;

(E) [~~(5)~~] evaluate and select existing and emergent technologies in support of the library program;

(F) [~~(6)~~] communicate effectively to patrons to determine their information needs;

(G) [~~(7)~~] demonstrate an understanding of bibliographic and retrieval techniques needed to organize and use information sources;

(H) [~~(8)~~] use knowledge of literature and information resources to help students select materials;

(I) [~~(9)~~] understand and model principles of intellectual freedom, information access, privacy, and proprietary rights;

(J) [~~(10)~~] design and use statistical reports to support an exemplary library program;

(K) [~~(11)~~] use varied reading materials, programs, and motivational strategies to guide the development of independent readers;

(L) [~~(12)~~] engage in continual self-evaluation and self-directed learning for professional growth;

(M) [~~(13)~~] maintain an active interest in and contribute to appropriate local, state, regional, and national professional associations and publications;

(N) [~~(14)~~] demonstrate ethical behavior in all professional contexts; and

(O) [~~(15)~~] work collaboratively with other information professionals in support of the library program and the profession.

(c) Required standards for an applicant who is admitted to an educator preparation program for the School Librarian certificate on or after September 1, 2026:

(1) Standard I. Information Literacy: As an information specialist, teacher, and instructional partner, the school librarian provides information literacy instruction that enables educators, learners, and other school stakeholders to efficiently locate, accurately evaluate, ethically use, and clearly communicate information in various formats. The school librarian must demonstrate the knowledge, skills, and dispositions necessary to:

(A) curate resources in a variety of formats to support inquiry, academic, and/or personal educator and learner needs;

(B) model and guide learners and educators to use information effectively to accomplish a specific purpose;

(C) provide instruction and coaching to students and educators to accurately evaluate information, including the characteristics of misinformation and disinformation, in order to determine the validity of a variety of resources;

(D) practice the ethical and legal use of information, including transformative fair use, intellectual freedom, information access, privacy, proprietary rights, and validation of information as approved in local policy Educational Foundation of America (EFA), federal law (1st Amendment), and best library practices;

(E) collaborate with and coach educators to integrate information literacy skills across the curriculum at point of need, including co-planning, co-teaching, co-assessing, and co-evaluating as appropriate; and

(F) support and lead professional development opportunities that promote best practices in information literacy in teaching and learning.

(2) Standard II. Inquiry: As a campus leader, instructional partner, and information specialist, the school librarian creates a culture of inquiry which includes the pursuit, creation, and sharing of knowledge, as well as support for both student and professional learning. The school librarian must demonstrate the knowledge, skills, and dispositions necessary to:

(A) curate a collection of current materials in a variety of formats, including open educational resources (OER), that support student inquiry and/or interests, and which are developmentally appropriate, culturally inclusive, and aligned with state and district learning standards;

(B) implement a research-based inquiry approach to learning, focusing on developmentally appropriate information literacy skills that students use to pursue, create, and share knowledge;

(C) offer opportunities for learners to explore real-world problems by interacting with relevant information in a variety of formats that consider diverse points of views, using critical-thinking skills to make informed judgments;

(D) collaborate with and coach educators to co-plan, co-teach, co-assess, and co-evaluate inquiry-based learning; and

(E) support and lead professional development opportunities that promote best practices in inquiry-based teaching and learning.

(3) Standard III. Culture of Reading: As a campus leader and instructional partner, the school librarian promotes reading for learning, personal growth, and enjoyment that are essential skills for college, career, and community. The school librarian must demonstrate the knowledge, skills, and dispositions necessary to:

(A) encourage students to read a variety of literature for information and pleasure;

(B) provide access to physical and virtual collections of high quality, current resources in a variety of formats and platforms (accessible on most devices) that may reflect input from stakeholder interest;

(C) develop a collection of informational texts that addresses the needs of learners that includes materials that are academically aligned to curriculum, connect to real-world events, reflect students' experiences and interests, and address social and environmental issues;

(D) develop a collection of texts that appeal to learner sensibilities, values and interests, offer diverse points of view, and meet personal reading needs;

(E) lead opportunities for students to respond to literature using one or more methods, such as social media, booktalks/trailers, podcasts, blog posts, reading promotions, programs, and/or book clubs;

(F) provide and support literacy instruction through research-based strategies and appropriate technology applications;

(G) support, supplement, and elevate a culture of reading through participation in national, state, and local reading initiatives, as well as literacy events;

(H) partner with other types of libraries (e.g., public, academic, governmental, special), information institutions (e.g., museums, institutes, and virtual field trips), and community partners;

(I) collaborate with and coach educators to promote a culture of reading, student choice, and integrate reading skills in the inquiry process and other areas across the curriculum; and

(J) support and lead professional development opportunities that promote the culture of reading and best practices for self-selected reading choices.

(4) Standard IV. Digital Learning: As an information specialist and instructional partner, the school librarian supports and advocates for equitable access to current and emerging technologies that provide curated and open access to a variety of resources and model best instructional practices informed by International Society for Technology in Education (ISTE) Standards for Educators and curriculum standards. The school librarian must demonstrate the knowledge, skills, and dispositions necessary to:

(A) effectively integrate and model current and emerging technologies (e.g., applications and tools) aligned to ISTE standards for educators and students across all content areas;

(B) provide open access to an equitable and diverse digital library collection of resources available at point of need;

(C) instruct students in the access and use of a variety of digital library resources at point of need virtually or in person;

(D) provide instruction and coaching for students and educators on creative, innovative, and ethical use of current and emerging technologies in the construction and presentation of knowledge;

(E) model and encourage the responsible selection and use of effective digital tools as required by federal, state, and local policies and procedures;

(F) provide instruction and coaching to students and educators to responsibly use digital intellectual property, understand current copyright rules, make responsible online decisions, understand the significance of a digital identity, and use positive digital citizenship practices as part of a global community;

(G) provide instruction and coaching to students and educators on the evaluation of characteristics of misinformation and disinformation in digital resources, including various forms of media (e.g., social media, websites, video, podcasts, multimodal text, blogs);

(H) collaborate with and coach educators to meaningfully integrate digital tools and best practices across content areas and other areas across the curriculum; and

(I) support and lead professional development opportunities that promote best practices in digital learning.

(5) Standard V. Safe and Nurturing Environment: As a program administrator and campus leader, the school librarian develops and maintains the library as an essential, safe, and flexible environment that is an inviting, shared space for teaching, learning, and personal exploration. The school librarian must demonstrate the knowledge, skills, and dispositions necessary to:

(A) create a stimulating learning environment that cultivates and nurtures a climate of dignity and belonging;

(B) develop policies, procedures, and programs that are created with input from the entire learning community;

(C) develop a library space that features an aesthetically appealing environment offering simultaneous access that meets the needs of individual students, small groups, and classes within a facility, as required by the Texas Administrative Code (TAC) regarding library facilities;

(D) lead library-based learning opportunities and activities for families and the community during and/or beyond the school day;

(E) develop the library as a central element in supporting student achievement, connecting students with information and each other, and promoting a positive and inclusive school culture; and

(F) empower student agency and independent use of the library through clear and consistent signage that allows users of all ability levels to quickly and easily navigate, locate and access resources as well as inform safety protocols.

(6) Standard VI. Leadership: As a campus leader and instructional partner, school librarians proactively collaborate, plan, and engage in leadership activities for various purposes (e.g., professional development, coaching, instruction, program planning) in collaboration with teachers, principals, school counselors, reading specialists, instructional coaches, instructional technologists, and/or curriculum specialists to model and lead research-based best practices across campus, district, and professional communities, as well as seek professional growth opportunities. The school librarian must demonstrate the knowledge, skills, and dispositions necessary to:

(A) apply research-based best practices and stay current in instructional pedagogy, including the use of formative and summa-

tive assessment to inform lesson planning, teaching, assessment, and evaluation;

(B) ensure library program and resources are aligned with school, district, and state educational standards;

(C) lead purposeful professional development that is aligned to the needs of the learning community and provide ongoing support through research-based instructional coaching;

(D) engage in professional growth opportunities to increase knowledge and skills that inform practice as a librarian, leader, and instructional partner through school and district continuing education, state and national professional organizations, professional learning networks, virtual learning, and more;

(E) participate in campus and district planning;

(F) develop a yearly plan for events and activities that engage the learning community in transformative and enriching experiences;

(G) continually collect and analyze qualitative and quantitative data to advocate for and evaluate the library program in order to improve student outcomes and make informed decisions;

(H) ensure that all students have equal access to appropriate resources necessary for academic success in compliance with Americans with Disabilities Act (ADA) guidelines;

(I) advocate for the value of a flexible space and schedule to meet the needs of all learners, which allows for use at point of need, curriculum support, and personalized learning;

(J) articulate the library's mission, vision, goals, objectives, and a strategic plan that is in alignment with campus, district, and statewide plans and incorporates sound policies and procedures;

(K) regularly evaluate, update, and publish library policies and procedures to meet the needs of learners and the broader educational community;

(L) train library staff and volunteers on various aspects of the library program (e.g., positive customer services, student privacy, digital resources, library organization, scheduling to maximize student access) in order to meet the needs of the learning community;

(M) regularly collaborate with stakeholders to advocate for the library program;

(N) advocate for and protect each user's right to privacy, confidentiality, and age-appropriate principles of intellectual freedom, as indicated by best library practices (American Library Association (ALA) Privacy) and federal Family Educational Rights and Privacy Act (FERPA) law;

(O) demonstrate professional behavior in accordance with the educator code of ethics as stated by the ALA and Texas Education Agency;

(P) apply best practices in library program administration to systematically perform library management operations such as budgeting; purchasing; creating reports; grant writing; and overseeing circulation and inventory; and

(Q) apply best practices and standard library procedures for organizing and processing various materials, and articulate the purpose of quality cataloging to facilitate resource sharing.

§239.60. Requirements for the Issuance of the Standard School Librarian Certificate.

To be eligible to receive the standard School Librarian certificate [~~Certificate~~], a candidate must:

(1) successfully complete a school librarian preparation program that meets the requirements of §239.50 of this title (relating to Preparation Program Requirements) and §239.55 of this title (relating to Standards Required for the School Librarian Certificate);

(2) successfully complete the examination based on the standards identified in §239.55 of this title;

(3) hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(4) have two creditable years of teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of Part 2 of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2).

§239.65. Requirements to Renew the Standard School Librarian Certificate.

[~~(a) An individual issued a standard librarian certificate from September 1, 1999, to August 31, 2000, is subject to Chapter 232, Subchapter B, of this title (relating to Certificate Renewal and Continuing Professional Education Requirements), except that only 150 clock-hours of continuing professional education must be completed during the first five-year renewal period. During subsequent renewal periods, the holder of such an active standard librarian certificate must satisfy the most current requirements for renewal.~~]

[~~(b)~~] An individual issued the standard School Librarian certificate [~~Certificate on or after September 1, 2000,~~] is subject to the renewal requirements of Chapter 232, Subchapter A [~~B~~], of this title (relating to Certificate Renewal and Continuing Professional Education Requirements).

[~~(c) An individual who holds a valid Texas school librarian certificate or endorsement issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures implemented by the Texas Education Agency staff under §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators).~~]

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 475-1497

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19 TAC §239.70

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(2), which requires the SBEC to appoint an advisory committee composed of members of each class of certificate to recommend standards for that class to the Board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1)-(4), which require the SBEC to propose rules that provide for the reg-

ulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certification examination and each core subject covered by the generalist certification examination; and TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.031(a); 21.040(2); 21.041(a); 21.041(b)(1)-(4); 21.044; 21.048(a); and 21.054.

§239.70. Transition and Implementation 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.

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SUBCHAPTER D. READING SPECIALIST CERTIFICATE

19 TAC §§239.90 - 239.95

STATUTORY AUTHORITY. The amendments and new section are proposed under Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(2), which requires the SBEC to appoint an advisory committee composed of members of each class of certificate to recommend standards for that class to the Board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1)-(4), which require the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certification examination and each core subject covered by the generalist certification examination; and TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

CROSS REFERENCE TO STATUTE. The amendments and new section implement Texas Education Code (TEC), §§21.031(a); 21.040(2); 21.041(a); 21.041(b)(1)-(4); 21.044; 21.048(a); and 21.054.

§239.90. General Provisions.

(a) Because the reading specialist plays a critical role in campus effectiveness and student achievement, the rules adopted by the State Board for Educator Certification in this subchapter ensure that each candidate for the Reading Specialist certificate [~~Certificate~~] is of the highest caliber and possesses the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) An individual serving as a reading specialist is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

(c) The holder of the Reading Specialist certificate [~~Certificate~~] issued under the provisions of this subchapter may teach reading to students in Prekindergarten-Grade 12.

§239.91. Minimum Requirements for Admission to a Reading Specialist Preparation Program.

(a) Prior to admission to an educator preparation program leading to the standard Reading Specialist certificate [~~Certificate~~], an individual must:

(1) hold a baccalaureate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) meet the requirements for admission to an educator preparation program under Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates).

(b) An educator preparation program may adopt requirements for admission in addition to those required in subsection (a) of this section.

§239.92. Preparation Program Requirements.

(a) Structured, field-based training must be focused on actual experiences with each of the standards identified in §239.93 of this title (relating to Standards Required for Reading Specialist Certificate) [~~the State Board for Educator Certification-approved reading specialist standards~~] to include experiences with diverse types of students, grade levels, and campuses.

(b) An educator preparation program must develop and implement specific criteria and procedures that allow a candidate to substitute related professional reading specialist training and/or experience directly related to the standards identified in §239.93 of this title [~~subsection (a) of this section~~] for part of the preparation coursework or other program requirements.

§239.93. Standards Required for Reading Specialist Certificate.

(a) Reading Specialist Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program in the development of curricula and coursework and by the State Board for Educator Certification as the basis for developing the examination required to obtain the Reading Specialist certificate. The standards also serve as the foundation for the professional growth plan and continuing professional education activities required by §239.96 of this title (relating to Requirements to Renew the Standard Reading Specialist Certificate).

(b) Required standards for an applicant who is admitted to an educator preparation program for the Reading Specialist certificate before September 1, 2026:

(1) Standard I. Components of Reading: The Reading Specialist applies knowledge of the interrelated components of reading across all developmental stages of oral and written language and has expertise in reading instruction at the levels of Early Childhood (EC)-Grade 12.

(A) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding oral language:

(i) the basic linguistic patterns and structures of oral language, such as continuant and stop sounds and coarticulation of sounds;

(ii) relationships between oral language development and the development of reading skills, such as the expected stages and milestones in acquiring oral language; implications of individual variations in oral language development for reading; and ways to use the cultural, linguistic, and home backgrounds of students to develop and enhance students' oral language;

(iii) delays or differences in students' oral language development and when such delays/differences warrant further assessment and additional intervention;

(iv) plan, implement, and monitor instruction that is responsive to individual students' strengths, needs, and interests and is based on ongoing informal and formal assessment of individual students' oral language development;

(v) select and use instructional materials and strategies that reflect both cultural diversity and an awareness of instructional progressions that are based on a convergence of research evidence and that promote students' oral language development;

(vi) provide systematic oral language instruction using language structures and pronunciations commonly associated with standard English;

(vii) use a variety of instructional methods to teach and reinforce oral language development; and

(viii) build on and support students' oral language skills and increase their oral language proficiency through reinforcing activities that are based on a convergence of research evidence (e.g., reading aloud, dramatic play, classroom conversations, songs, rhymes, stories, games, language play, discussions, questioning, sharing information).

(B) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding phonological and phonemic awareness:

(i) expected stages and patterns in the development of phonological and phonemic awareness, implications of individual variations in the development of phonological and phonemic awareness, and instructional sequences that develop and accelerate students' phonological and phonemic awareness and are based on a convergence of research evidence;

(ii) delays or differences in students' phonological and phonemic awareness and when such delays/differences warrant further assessment and additional intervention;

(iii) plan, implement, and monitor instruction that is responsive to individual students' strengths, needs, and interests and is based on ongoing informal and formal assessment of individual students' phonological and phonemic awareness;

(iv) select and use instructional materials and strategies that reflect both cultural diversity and an awareness of instructional progressions that are based on a convergence of research evidence and that promote students' phonological and phonemic awareness;

(v) provide systematic instruction and reinforcing activities in phonological and phonemic awareness; and

(vi) use a variety of instructional methods to teach and reinforce the development of phonological and phonemic awareness.

(C) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding concepts of print and alphabetic principle:

(i) the development of concepts of print (e.g., left-right progression, spaces between words, use of glossaries and indexes);

(ii) the relationship between concepts of print and other reading-related skills;

(iii) the elements of the alphabetic principle, including letter names, graphophonemic knowledge, and the relationship of the letters in printed words to spoken language;

(iv) expected stages and patterns in students' developing understanding of the alphabetic principle and implications of individual variations in the development of this understanding;

(v) instructional strategies that develop and accelerate students' application of the alphabetic principle to beginning decoding and that are based on a convergence of research evidence;

(vi) delays or differences in students' understanding of and ability to apply the alphabetic principle and when such delays/differences warrant further assessment and additional intervention;

(vii) model and teach concepts of print;

(viii) plan, implement, and monitor instruction that is responsive to individual students' strengths, needs, and interests and is based on ongoing formal and informal assessment of individual students' understanding and application of the alphabetic principle;

(ix) select and use instructional strategies and materials (e.g., decodable, predictable, or rhyming text; alphabetic books; environmental print) that reflect cultural diversity, are based on a convergence of research evidence, and promote students' understanding and application of the alphabetic principle;

(x) provide systematic instruction and reinforcing activities to promote students' understanding and application of the alphabetic principle; and

(xi) use a variety of instructional methods to teach and reinforce students' understanding and application of the alphabetic principle.

(D) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding word identification:

(i) word identification strategies (e.g., application of the alphabetic principle, structural analysis, syllabication, identification of high-frequency sight words, use of context clues) when reading words in context;

(ii) strategies for confirming word pronunciation and/or meaning when reading words in context (e.g., use of context clues and resource materials);

(iii) expected patterns of development in the use of word identification strategies, implications of individual variations in development in this area, and instructional strategies that develop and accelerate students' skills in word identification and are based on a convergence of research evidence;

(iv) delays or differences in students' development of word identification skills and when such delays/differences warrant further assessment and additional intervention;

(v) plan, implement, and monitor instruction that is responsive to individual students' strengths, needs, and interests and is based on ongoing informal and formal assessment of individual students' word identification skills;

(vi) select and use instructional materials and strategies that reflect cultural diversity, are based on a convergence of research evidence, and promote students' understanding and application of word identification skills;

(vii) provide systematic instruction and reinforcing activities to promote students' word identification skills, including the use of increasingly complex, connected text; and;

(viii) use a variety of instructional methods to teach and reinforce word identification skills.

(E) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding fluency:

(i) the relationship between reading fluency and comprehension;

(ii) expected patterns of development in reading fluency (including developmental benchmarks), implications of individual variations in the development of fluency, and instructional strategies that develop students' fluency and are based on a convergence of research evidence;

(iii) delays or differences in students' fluency and when such delays/differences warrant further assessment and additional intervention;

(iv) plan, implement, and monitor instruction that is responsive to individual students' strengths, needs, and interests and is based on ongoing informal and formal assessment of individual students' reading fluency;

(v) evaluate different factors and purposes of texts to promote fluency based on text selection and use instructional materials and strategies that reflect cultural diversity, are based on a convergence of research evidence, and promote students' reading fluency;

(vi) provide systematic instruction and reinforcing activities to promote students' reading fluency; and

(vii) use a variety of instructional methods to teach and reinforce students' reading fluency.

(F) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding comprehension:

(i) a variety of comprehension theories/models (e.g., transactional, interactive, metacognitive, socio-psycho linguistic, constructivist) and their impact on instructional strategies;

(ii) student factors that affect reading comprehension (e.g., schema, past reading instruction, oral language, interests, attitudes, word recognition skills, vocabulary, fluency, ability to monitor understanding);

(iii) textual factors that affect reading comprehension (e.g., readability, vocabulary, illustrations, format, author's schema, genre, syntactical and conceptual density);

(iv) contextual factors that affect reading comprehension (e.g., curriculum materials, time allotted for reading, grouping practices, environment, modes of text presentation);

(v) literal, inferential, critical, and evaluative comprehension skills;

(vi) characteristics of specific texts (e.g., children's literature, young adult literature, magazines, reference materials, electronic media) and strategies for reading a variety of texts (e.g., expository and narrative texts);

(vii) delays or differences in the development of students' comprehension skills/strategies and when such delays/differences warrant further assessment and additional intervention;

(viii) plan, implement, and monitor instruction that is responsive to individual students' strengths, needs, and interests and is based on ongoing informal and formal assessment of individual students' reading comprehension strategies;

(ix) select and use appropriate materials and strategies that reflect cultural diversity, are based on a convergence of research evidence, and promote students' reading comprehension skills;

(x) facilitate comprehension through the use of storytelling, creative dramatics, and artistic presentations to encourage multiple creative and personal responses to literary and nonliterary texts;

(xi) provide instruction to promote students' literal, inferential, critical, and evaluative comprehension;

(xii) use a variety of instructional methods to teach and reinforce comprehension skills;

(xiii) promote students' comprehension skills by providing them with multiple opportunities to listen, read, and respond to various types of fiction and nonfiction literature for children and to learn about types of narrative and expository texts; and

(xiv) promote students' ability to apply strategies that facilitate comprehension before, during, and after reading, including metacognitive strategies.

(G) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding vocabulary:

(i) the definition and application of a wide range of general, technical, and specialized vocabulary and associated concepts;

(ii) effective instructional strategies for developing and expanding vocabulary;

(iii) delays or differences in students' vocabulary development and when such delays/differences warrant further assessment and additional intervention;

(iv) plan, implement, and monitor instruction that is responsive to individual students' strengths, needs, and interests and is based on ongoing informal and formal assessment of individual students' vocabulary knowledge;

(v) select and use appropriate materials and strategies that reflect cultural diversity, are based on a convergence of research evidence, and promote students' vocabulary knowledge;

(vi) provide systematic instruction and reinforcing activities to promote and accelerate students' vocabulary knowledge; and

(vii) use a variety of instructional methods to teach and reinforce vocabulary development.

(H) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding written language:

(i) predictable stages in the development of written language and writing conventions, including the physical and/or cognitive processes involved in letter formation, word writing, sentence construction, spelling, punctuation, and grammatical expression, while recognizing that individual variations occur;

(ii) writing processes, including the use of self-assessment in writing;

(iii) the appropriate use of writing conventions and appropriate grammar and usage for communicating clearly and effectively in writing;

(iv) the importance of spelling and graphophonemic knowledge for success in reading and writing;

(v) that spelling is developmental and is based on students' knowledge of the phonological system and of the letter names, their judgments of phonetic similarities and differences, and their ability to abstract phonetic information from letter names;

(vi) the stages of spelling development (i.e., prephonetic, phonetic, transitional, and conventional) and how and when to support students' development from one stage to the next;

(vii) the development of writing in relation to listening, speaking, and reading;

(viii) the similarities and differences between language (e.g., syntax, vocabulary) used in spoken and written English;

(ix) writing for a variety of audiences, purposes, and settings;

(x) the benefits of technology for teaching writing (e.g., word processing, desktop publishing software);

(xi) informal and formal procedures for ongoing monitoring and assessment of writing development and writing conventions;

(xii) formally and informally assess students' writing development, including their use of writing conventions, and provide focused instruction to address students' strengths, needs, and interests;

(xiii) use assessment results to help plan writing instruction for individuals and groups;

(xiv) use appropriate instructional strategies and sequences for developing students' writing skills;

(xv) promote effective use of written English conventions by helping students recognize the similarities and differences between language (e.g., syntax, vocabulary) used in spoken and written English;

(xvi) create an environment in which students are motivated to express their ideas in writing;

(xvii) provide instruction in various stages of writing, including prewriting, drafting, editing, and revising;

(xviii) use appropriate instructional strategies to teach purposeful, meaningful writing in connection with listening, speaking, and reading;

(xix) use strategies to promote students' recognition of the practical uses of writing;

(xx) provide opportunities for students to write in a variety of forms and modes for various purposes, audiences, and settings;

(xxi) provide opportunities for students to self-assess their writings (e.g., for clarity, comprehensiveness, interest to audience) and their development as writers;

(xxii) provide opportunities for students to elicit critiques of their writing from others;

(xxiii) provide hands-on activities to help students develop and refine the fine-motor skills necessary for writing, including teaching pencil grip, paper position, and beginning stroke;

(xxiv) provide direct instruction and guided practice in the accurate use of English writing conventions (e.g., grammar, spelling, capitalization, punctuation);

(xxv) provide systematic spelling instruction in common spelling patterns based on phonics skills already taught, and provide opportunities for students to use and develop their spelling skills in the context of meaningful written expression;

(xxvi) model writing as an enjoyable activity and as a tool for lifelong learning;

(xxvii) provide instruction in the use of technology that facilitates written communication;

(xxviii) communicate with parents/guardians about students' writing development, and collaborate with them to promote their children's writing development; and

(xxix) collaborate with other professionals and continually seek implications for practice from convergent research about students' development of written communication skills and writing conventions.

(2) Standard II. Assessment and Instruction: The Reading Specialist uses expertise in implementing, modeling, and providing integrated literacy assessment and instruction by utilizing appropriate methods and resources to address the varied learning needs of all students.

(A) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding assessment:

(i) the reciprocal nature of assessment, instruction, and instructional planning;

(ii) types, characteristics, and appropriate uses of reading assessments, including screening, in-depth assessment, continuous progress monitoring, and formative and summative evaluation, for each of the components of reading (e.g., oral language, phonological and phonemic awareness, concepts of print, alphabetic principle, word identification, fluency, comprehension, vocabulary, written language);

(iii) the advantages and limitations of various types of reading assessments (e.g., informal, formal, technology based);

(iv) how characteristics of assessment instruments, materials, and procedures interact with other factors that may impact student performance (e.g., text characteristics; testing environment; and student characteristics such as language, culture, prior knowledge, disabilities); assessment-related issues, such as bias, reliability, validity, and confidentiality; common standardized testing terminology (e.g., raw score, scaled score, percentile, grade equivalency, stanine, normal curve equivalency (NCE), growth scale); state and federal requirements related to reading assessment and diagnosis; when delays or differences in language and literacy development warrant referral for additional evaluation or intervention (e.g., auditory, visual, cognitive, emotional, social, physical);

(v) grade-level expectations and procedures for assessing students' literacy skills; various means for assessing students' reading, study, and inquiry skills across content areas;

(vi) how students' use of self-assessment can enhance their literacy development;

(vii) select and administer appropriate assessment tools to inform instruction and learning, including norm-referenced tests, criterion-referenced tests, formal and informal inventories, constructed response measures, portfolio-based assessments, student self-evaluations, work-performance samples, running records, miscue analyses, observations, anecdotal records, journals, technology-based assessments, and other indicators of student progress;

(viii) use multiple and varied assessments before, during, and after instruction to guide instruction, monitor progress, and address specific concerns;

(ix) evaluate results from assessments that target specific literacy components (i.e., oral language, phonological and phonemic awareness, concepts of print, alphabetic principle, word identification, fluency, comprehension, vocabulary, written language);

(x) use assessment results to plan instruction for individuals and groups and to develop a targeted program that will address identified literacy needs;

(xi) identify each student's independent, instructional, and frustrational reading levels and adjust his/her program to accelerate student learning;

(xii) communicate the results of formal and informal assessments and their instructional implications to all stakeholders, either orally or in written form; and

(xiii) teach and model for other educators how to use formal and informal assessments to monitor the literacy development of their students.

(B) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding instruction:

(i) strategies to integrate listening and speaking, reading and writing, and viewing and representing across all levels and content areas;

(ii) state and national content and performance standards that relate to reading;

(iii) the components of effective instructional design (e.g., eliciting and using prior knowledge; integrating prior and new knowledge; integrating knowledge, skills, and strategies; providing scaffolded instruction; planning reviews);

(iv) specific short-term and long-term interventions to address students' needs in each identified component of reading;

(v) characteristics of various learning preferences and modalities (e.g., global, analytic, auditory, visual) and their implications for instruction;

(vi) how differences in dialect or vocabulary development may affect a student's acquisition of reading skills;

(vii) the strengths and limitations of current educational theories that underlie instructional practices and programs;

(viii) strategies for creating an environment that integrates the language arts; promotes respect for cultural, linguistic, and ethnic diversity; and fosters the literacy growth of all students;

(ix) strategies for evaluating and selecting appropriate children's and young adult literature and other instructional materials;

(x) develop systematic, sequential literacy instruction that reflects state and national content and performance standards, the components of a comprehensive literacy program, students' strengths and needs, and a convergence of research evidence;

(xi) implement instructional strategies that focus on specific literacy components (e.g., oral language, phonological and phonemic awareness, concepts of print, alphabetic principle, word identification, fluency, comprehension, vocabulary, written language);

(xii) work with other professionals to evaluate, select, and use appropriate instructional materials, technologies, and strategies relating to writing, including concepts of print, spelling, written vocabulary, and organization of written text, to reinforce reading instruction;

(xiii) assist other educators in implementing flexible grouping to promote literacy growth for all students;

(xiv) identify, evaluate, and recommend a variety of appropriate reading materials for a range of reading levels, purposes, and interests;

(xv) promote students' understanding of various literary genres and skills in literary response and analysis;

(xvi) apply appropriate strategies for addressing the literacy needs and accelerating the achievement of any student who is reading below grade level;

(xvii) support learning in all content areas by teaching students to apply a variety of strategies for comprehending expository and narrative texts;

(xviii) provide instruction to promote students' acquisition and use of study and inquiry skills (e.g., note taking, outlining, skimming and scanning, using graphic organizers, setting purposes for reading, self-assessing, locating and evaluating multiple sources of information); and

(xix) provide students with opportunities to interpret, analyze, and evaluate events and ideas based on information from maps, charts, graphics, video segments, and technology presentations

and to use media to produce visual images, messages, and meanings that compare ideas and points of view.

(3) Standard III. Strengths and Needs of Individual Students: The Reading Specialist recognizes how the differing strengths and needs of individual students influence their literacy development, applies knowledge of primary and second language acquisition to promote literacy, and applies knowledge of reading difficulties, dyslexia, and reading disabilities to promote literacy.

(A) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding addressing individual needs:

(i) that students' progress in gaining the knowledge and skills necessary to learn to read varies and requires varied instruction and levels of instructional intensity; and

(ii) develop systematic, sequential reading instruction that is based on a convergence of research evidence and that is responsive to individual students' strengths and needs, including children whose first language is other than English, and students with reading difficulties, dyslexia, and reading disabilities.

(B) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding English language learners:

(i) issues and concepts related to the transfer of literacy competency from one language to another;

(ii) expected stages and patterns of first- and second-language learning;

(iii) sound practices for literacy instruction for English Language Learners that are based on a convergence of research;

(iv) issues and procedures in assessing English Language Learners' reading strengths and needs, and when to collaborate with other specialists to aid in assessment;

(v) how to distinguish between language differences and reading disabilities and when additional assessment or intervention is needed;

(vi) work with other professionals in selecting and using appropriate formal and informal assessments of English Language Learners to plan instruction that is responsive to individual students' strengths, needs, and interests;

(vii) work with other professionals to plan, implement, and monitor instruction that builds on students' cultural, linguistic, and home backgrounds to enhance their oral language skills in English, and promote the transfer of skills from oral language to written language while maintaining literacy in the primary language;

(viii) work with other professionals to select and use a variety of instructional materials and strategies that reflect both cultural diversity and an awareness of instructional progressions to facilitate students' transfer of literacy from the first language to English while respecting and promoting maintenance of the primary language; and

(ix) collaborate with teachers, specialists, parents/guardians, students, and administrators to promote and maintain literacy in both languages.

(C) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding students with reading difficulties, dyslexia, and reading disabilities:

(i) characteristics and instructional implications of reading difficulties, dyslexia, and reading disabilities in relation to the development of reading competence;

(ii) state and federal laws, regulations, and guidelines regarding assessment and provision of services for students with reading difficulties, dyslexia, and reading disabilities;

(iii) means for gathering and analyzing assessment data for students with reading difficulties, dyslexia, and reading disabilities, and when to seek assistance from a specialist;

(iv) convergent research about sound practices for providing instruction to students experiencing reading difficulties, dyslexia, and reading disabilities, and convergent research about prevention and intervention strategies for students;

(v) procedures for monitoring and evaluating the effectiveness of an intervention and determining when additional or alternative interventions are appropriate;

(vi) work with other professionals in selecting and using appropriate informal and formal assessments of students with reading difficulties, dyslexia, and reading disabilities to plan instruction that is responsive to individual students' strengths, needs, and interests;

(vii) interpret and use results of screening devices and formal and informal reading assessments to know when in-depth evaluation and additional intervention are warranted;

(viii) use assessment results to help design instruction that promotes reading skills by building on strengths and addressing needs for students with reading difficulties, dyslexia, and reading disabilities;

(ix) collaborate with teachers, specialists, parents/guardians, students, and administrators to promote literacy in students with reading difficulties, dyslexia, and reading disabilities, while respecting their individuality; and

(x) facilitate appropriate placement of students, matching individual needs to available services.

(D) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding students with reading theoretical foundations of literacy:

(i) the major theories of language acquisition, reading, cognition, and learning (e.g., behaviorism, cognitivism, constructivism, transactionalism);

(ii) the impact of physical, perceptual, emotional, social, cultural, environmental, and intellectual factors on learning, language development, and reading acquisition;

(iii) the importance of the interactions among the reader, the text, and the context of the reading situation;

(iv) the role of societal trends and technological innovations in shaping literacy needs (e.g., Internet, reading electronic texts);

(v) the importance of understanding and respecting cultural, linguistic, ethnic, and individual diversity; and

(vi) communicate the theoretical rationale for instructional decisions and practices.

(4) Standard IV. Professional Knowledge and Leadership: The Reading Specialist understands the theoretical foundations of literacy; plans and implements a developmentally appropriate, research-based reading/literacy curriculum for all students; collaborates and communicates with educational stakeholders; and participates and

takes a leadership role in designing, implementing, and evaluating professional development programs.

(A) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding research-based reading/literacy curriculum:

(i) sources for locating information about convergent research on reading;

(ii) foundations of basic research design, methodology, and application;

(iii) methods and criteria for critically reviewing research on reading and selecting research for educational applications;

(iv) apply knowledge of convergent research for improved literacy instruction for all students;

(v) facilitate teacher-based and classroom-based research that uses a range of methodologies for the purpose of improving reading instruction;

(vi) prepare written documentation of assessment data, analysis of instructional needs, and accommodations for instruction;

(vii) consult on individual educational plans for students with learning problems related to literacy;

(viii) participate in ongoing curriculum development and evaluation; and

(ix) participate in the coordination of services associated with literacy programs (e.g., needs assessment, program development and evaluation, resource allocation, grant and proposal writing).

(B) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding collaboration and communication with education stakeholders:

(i) how leadership, communication, and facilitation skills and strategies can effect positive change in the school reading program and reading instruction;

(ii) principles, guidelines, and professional ethical standards regarding collegial and professional collaborations related to reading instruction;

(iii) facilitate effective interactions among groups and individuals in order to improve literacy instruction for all students;

(iv) communicate research findings and make recommendations based on a convergence of research evidence to colleagues and the wider community;

(v) communicate information and local data about literacy and, when appropriate, make recommendations to district staff and community stakeholders;

(vi) model ethical professional behavior; and

(vii) work with other educators to involve parents/guardians in cooperative efforts to support students' reading and writing development.

(C) The beginning Reading Specialist knows, understands, and is able to perform each of the following functions regarding professional development:

(i) strategies for facilitating positive change in instructional practices through professional development;

(ii) effective professional development that promotes sustained application in classroom practice;

(iii) work with other educators to initiate, implement, and evaluate professional development;

(iv) use local data to identify and prioritize professional development needs;

(v) provide sound professional development experiences that address the needs of participants, are sensitive to school constraints (e.g., class size, limited resources), and use multiple indicators to monitor and evaluate the effectiveness of the professional development;

(vi) effectively mentor and coach educators for the successful implementation of instructional practices addressed in professional development;

(vii) pursue knowledge of literacy by reading professional journals and publications and by participating in conferences and professional organizations and other professional activities; and

(viii) recognize the value of participating in local, state, national, and international professional organizations whose mission is the improvement of literacy.

(c) Required standards for an applicant who is admitted to an educator preparation program for the Reading Specialist certificate on or after September 1, 2026:

(1) Standard I. Reading Foundations, Curriculum, and Instruction: Reading Specialists use advanced knowledge of literacy foundations and development that include the interrelatedness of oral and written language (reading, writing, listening, speaking, thinking) to collaborate, develop, lead, and advocate for learning experiences in response to the diverse needs (cultural, linguistic, educational) of students and other stakeholders (Prekindergarten (PK)-Grade 12 teachers, district administrators, parents).

(A) The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of oral language foundations of reading development in order to:

(i) explain the importance of the five domains of language (phonology, morphology, syntax, semantics, and pragmatics) to reading proficiency;

(ii) explain how oral language acquisition differs from reading acquisition and how oral language systems differ from writing systems in structure and development;

(iii) model, implement, and explain research-based and evidence-based instructional routines/activities in all five domains of language (phonology, morphology, syntax, semantics and pragmatics) that support building the neural connections which are necessary for skilled reading;

(iv) identify, explain, and build upon the ways language and literacy experiences, heritage language, cultural values, and dialectal variations contribute to literacy development;

(v) apply knowledge of the language structure (e.g., sounds, inflectional endings, and syntax) of a learner's heritage language or dialect (or access resources for information) to implement appropriate instruction in all areas of literacy;

(vi) customize, implement, and monitor instruction that builds on learners' cultural, linguistic, and home backgrounds to enhance their oral language skills in order to promote the transfer of skills from oral language to written language (while maintaining liter-

acy in the heritage language) using characteristic features of the stages of oral language development;

(vii) recognize that literacy differences across the grade levels (PK-Grade 12) may be due to speech and/or oral language delays, which may warrant additional evaluation and/or collaboration with other professionals (speech-language pathologist, educational diagnosticians, bilingual teachers); and

(viii) collaborate with all stakeholders to develop appropriate Multi-Tiered System of Support (MTSS) (Tier I-III) instruction using knowledge of the intrinsic differences (linguistic, cognitive, and neurobiological) between competent and striving readers.

(B) The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of phonological and phonemic awareness in order to:

(i) recognize and explain the developmental continuum and implications of individual variations in their learning of phonological and phonemic awareness skills which affect all components of literacy in order to customize, implement, and monitor appropriate phonological and phonemic awareness instruction for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(ii) customize, implement, and monitor differentiated, explicit, systematic, and cumulative instruction using evidence-based strategies in phonological and phonemic awareness skills in order to address the assessed needs of all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(iii) collaborate with teachers and model instruction to emphasize the importance of routine inclusion of phonological/phonemic awareness activities into reading, spelling, and vocabulary instruction across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(iv) recognize and explain the distinguishing characteristics of phonemes, common allophonic variations, and instances where spelling is not transparent in relation to phonemes and how these impact learners' reading and spelling in order to customize, implement, and monitor appropriate instruction across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(v) collaborate with teachers to identify sounds in standard English that are not in the student's heritage language or dialect that may be difficult for the student to perceive and produce in phonological and phonemic awareness activities in order to differentiate instruction across all grade levels (PK-Grade 12), content areas, and disciplinary literacies; and

(vi) recognize that literacy differences across grade levels (PK-Grade 12) may be due to speech and/or language delays in students' phonological or phonemic awareness, which may warrant additional evaluation and/or collaboration with other professionals (speech-language pathologist, educational diagnosticians, bilingual teachers).

(C) The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of print concepts and alphabetic knowledge in order to:

(i) recognize and explain the differences and the interrelatedness of print concept, alphabet knowledge, and alphabetic principle in order to customize, implement, and monitor appropriate instruction for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(ii) collaborate with teachers to recognize the stages in the developmental continuum and implications of individual variations related to print concepts, alphabet knowledge, and alphabetic principle to customize, implement, and monitor instructional practices that accelerate the development of knowledge and skills;

(iii) recognize delays or differences in learners' development of print concepts, alphabet knowledge, and alphabetic principle and collaborate with stakeholders in order to differentiate and implement appropriate interventions; and

(iv) collaborate with teachers to identify students whose heritage language may not be alphabetic or may be phonetically different from English in order to differentiate instruction across all grade levels (PK-Grade 12), content areas, and disciplinary literacies.

(D) The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of orthography: phonics, morphology, and etymology in order to:

(i) recognize and explain the importance and use of an appropriate developmental phonics continuum within orthography in order to customize, implement, and monitor appropriate instruction for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(ii) model, explain, and utilize the stages of spelling development in order to construct and implement explicit, systematic, and cumulative word study instruction for an authentic learning outcome for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(iii) model, implement, and collaborate with stakeholders regarding best practices for developing orthographic mapping in the brain (e.g., phoneme-grapheme mapping, phoneme segmenting and blending), which is necessary for automaticity in reading and spelling and authentic learning outcomes;

(iv) model, explain, and utilize the role of morphology and etymology in the literacy process in order to construct and implement explicit, systematic, and cumulative word study instruction for an authentic learning outcome for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(v) model, explain, and utilize the developmental continuum of morphological skills in order to construct and implement explicit, systematic, and cumulative word study instruction for an authentic learning outcome for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(vi) model, explain, and utilize the role of English word origins (etymology) in explaining spelling and word meaning and be knowledgeable of related instructional/reference resources in order to construct and implement explicit, systematic, and cumulative word study instruction for an authentic learning outcome for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(vii) model, implement, and collaborate with stakeholders regarding best practices for teaching sound blending (continuous versus discrete) and segmenting to promote accurate and quick word decoding and encoding in order to differentiate and achieve authentic learning outcomes for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(viii) model and explain evidence-based instructional routines/activities that are differentiated to promote all learners' development of accurate and automatic decoding and encoding skills with an explicit, systematic, and cumulative focus in order to customize, implement, and monitor appropriate instruction to achieve authentic learning outcomes for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(ix) model and explain best practices for teaching the decoding and encoding of high-frequency regular and irregular words in order to differentiate instruction and achieve authentic learning outcomes for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(x) model, implement, and collaborate with stakeholders regarding best practices for teaching the decoding of one-syllable and multisyllabic words and for responding to learners' misreads in order to achieve authentic learning outcomes for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(xi) collaborate with teachers to identify sounds and sound/letter sequences that are not in students' heritage language or dialect and that may require additional instruction in order for the student to perceive, produce, read, and spell certain phonics elements and in order to differentiate instruction across all grade levels (PK-Grade 12), content areas, and disciplinary literacies; and

(xii) collaborate with teachers to recommend appropriate texts to support all readers that correspond to content and purpose of phonics skill lessons in order to differentiate instruction across all grade levels (PK-Grade 12), content areas, and disciplinary literacies.

(E) The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of reading fluency in order to:

(i) recognize and model key concepts related to the importance of reading fluency, including the key indicators of fluency (i.e., accuracy, rate, and prosody), and its relationship to comprehension in order to customize, implement, and monitor instruction;

(ii) differentiate and create instruction based on the expected patterns of development in reading fluency (e.g., accurate, automatic letter naming to word reading, reading connected text, and reading increasingly complex connected text) across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(iii) differentiate and create instruction related to common factors that disrupt reading fluency (e.g., limited phonics knowledge; lack of automaticity in key decoding skills; limited recognition of high-frequency words; unfamiliarity with a text's content, vocabulary, grammatical structures, and/or limited practice with reading connected text);

(iv) create, implement, and evaluate evidence-based instructional materials and strategies in order to develop and accelerate students' fluency based on identified needs, including those that reflect cultural relevance and linguistic diversity;

(v) evaluate different factors and purposes of texts to promote fluency based on text complexity (i.e., decodability, content, length, format, illustrations, multiple genres, and other relevant factors) and collaborate with teachers to customize, implement, and monitor instruction in order to meet the needs of all learners; and

(vi) collaborate with stakeholders to locate, access, and recommend appropriate assistive technology in order to support reading fluency.

(F) The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of comprehension in order to:

(i) recognize, utilize, and explain a variety of theoretical perspectives relevant to comprehension and collaborate with teachers in order to customize, implement, and monitor comprehension instruction for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(ii) recognize, utilize, and explain the relationship between comprehension and other aspects of literacy learning (i.e., reading, writing, speaking, listening, thinking, and viewing) and collaborate with teachers in order to customize, implement, and monitor comprehension instruction;

(iii) describe, select, and employ evidence-based comprehension strategies (i.e., summarization, question generation and answering, visualization, guided highlighting, graphic representation) across the content areas as appropriate to identified student needs, text, and the purpose for reading;

(iv) collaborate with teachers and model explicit, systematic, and cumulative instruction to emphasize the importance of the interconnected relationship between reading and writing (e.g., summaries, note-taking, graphic organizers) in response to reading, content area, and disciplinary literacies to enhance comprehension;

(v) recognize and utilize factors that impact learners' reading comprehension instruction (i.e., oral and academic language development, background knowledge, motivation, interests, prior literacy experiences, diverse cultural and linguistic experiences) in order to customize, implement, and monitor comprehension instruction across all grade levels, content areas, and disciplinary literacies;

(vi) recognize and utilize textual factors that impact reading comprehension instruction (i.e., word-level factors, sentence-level factors, vocabulary, conceptual density, textual organization) in order to customize, implement, and monitor comprehension instruction across all grade levels, content areas, and disciplinary literacies;

(vii) recognize and utilize literacy rich environments that provide a variety of genres, text types, print, and digital materials to engage and motivate all learners; and

(viii) recognize and utilize a variety of genres, text types, print, and digital materials in order to customize, implement, and monitor comprehension instruction across all grade levels, content areas, and disciplinary literacies.

(G) The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of vocabulary in order to:

(i) recognize the underlying purpose and connection between the theoretical, conceptual, historical, and evidence-based components of language as related to vocabulary acquisition in order to customize, implement, and monitor vocabulary instruction across all grade levels, content areas, and disciplinary literacies;

(ii) apply evidence-based strategies, tools, techniques, and concepts of diversity and equity to vocabulary instruction in order to support students' oral language development, reading comprehension, and ability to engage in self-sustained, authentic, and meaningful literacy learning;

(iii) recognize and utilize factors that affect vocabulary development (e.g., vocabulary knowledge, familial, cultural, educational, socioeconomic, linguistic, and developmental characteristics) and collaborate with teachers in order to customize, implement, and

monitor vocabulary instruction across all grade levels, content areas, and disciplinary literacies;

(iv) recognize the importance of the role of daily and wide reading in vocabulary development and collaborate with teachers in order to customize, and implement instruction in order to monitor growth of vocabulary development;

(v) recognize and utilize the three tiers of vocabulary and collaborate with teachers in order to customize, implement, and monitor evidence-based vocabulary instruction used before, during, and after reading a connected text; and

(vi) collaborate with teachers to locate, customize, and recommend vocabulary materials and strategies that include multimodalities.

(H) The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of writing in order to:

(i) recognize, utilize, and explain a variety of theoretical perspectives related to all areas of writing development (i.e., mechanics and conventions of composition, revision and editing processes, and syntax) in order to customize, implement, and monitor writing instruction for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(ii) recognize, utilize, and explain the importance of the interconnected relationship between reading and writing processes in order to customize, implement, and monitor writing instruction that occurs daily for all learners across all grade levels (PK-Grade 12), content areas, and disciplinary literacies;

(iii) model and explain the importance of both foundational writing skills and writing process to collaborate with stakeholders in order to implement developmentally appropriate instruction for each;

(iv) recognize and utilize a variety of genres, text types, print, and digital materials in order to customize, implement, and monitor writing instruction across all grade levels, content areas, and disciplinary literacies; and

(v) collaborate with stakeholders to locate, access, and provide specific assistive technology (i.e., keyboarding, word-processing, speech-to-text) appropriate for students with written expression needs (e.g., spelling, organization, composition, handwriting).

(2) Standard II. Assessment: Reading Specialists understand foundational concepts, principles, and evidence-based practices related to literacy assessment and use expertise in selecting, modeling, prescribing, administering, and interpreting assessments to drive literacy practices for EC-Grade 12 learners and to support literacy program improvement of all stakeholders. The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of:

(A) foundational concepts, principles, and evidence-based practices related to literacy assessment;

(B) employ variety of literacy assessments and uses in order to identify, administer, and analyze assessments;

(C) use assessment data to produce both written and oral reports to inform instruction, intervention, and curriculum decisions;

(D) effectively communicate both written and orally in order to disseminate assessment results for all stakeholders;

(E) interpret assessment results identifying strengths and needs for instructional decision making (campus, grade level, teacher, and individual student);

(F) identify delays or differences in language and literacy development and when it warrants referral for additional evaluation or intervention (e.g., speech-language, auditory, visual, cognitive, emotional, social, physical); and

(G) understand the importance of selecting and using texts and tests that reflect a diversity of cultures and linguistic backgrounds, including the diversity of the classroom, school community, and society in order to:

(i) identify, administer, and interpret both elementary and secondary level formal and informal assessments, diagnostic surveys and inventories for the purpose of identifying a learner's strengths, progress, and instructional needs in all areas of literacy development, including oral language, phonological and phonemic awareness, print awareness, alphabet knowledge and alphabetic principle, orthography, vocabulary, comprehension, and writing;

(ii) select, model, prescribe, administer, and interpret assessments in response to learner and campus literacy needs for both elementary and secondary learners that may include content area literacy needs;

(iii) collaborate with colleagues on the implementation of assessments and analysis of assessment data for designing instruction that addresses the strengths and needs for all learners (including learning differences/exceptionalities such as marginalized learners, dyslexia, dysgraphia, literacy difficulties/disabilities, twice-exceptional, etc.);

(iv) interpret and utilize results of screening devices and formal and informal reading assessments to know when in-depth evaluation and additional intervention are warranted;

(v) lead, facilitate, and/or participate in advocacy discussions with stakeholders in order to secure curricular and/or instructional interventions or extensions based on assessment data and make referrals as necessary;

(vi) collaborate with stakeholders regarding the impact of advocacy efforts; and

(vii) collaborate with all stakeholders to develop appropriate MTSS (Tier I-III) instruction using knowledge of the intrinsic differences (linguistic, cognitive, and neurobiological) between competent and striving readers.

(3) Standard III. Learner Needs and Support: Reading Specialists recognize how the differing strengths and needs of individual learners influence their literacy development, apply knowledge of primary and second language acquisition to promote literacy, create a literate environment that encompasses the cultural and linguistic diversity of the individual learner, and apply knowledge of learning differences/exceptionalities (i.e., marginalized learners, dyslexia, dysgraphia, literacy difficulties/disabilities, twice-exceptional, etc.) to promote literacy. The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of:

(A) emergent bilingualism and the transfer from heritage language to additional language(s);

(B) advocacy and pedagogy for diverse and exceptional learners; differentiation; management, routines, and accessibility for literate and inclusive learning environments;

(C) the importance of including mental health wellness within the context of literacy instruction; and

(D) state and federal laws, regulations, and guidelines regarding assessment and provision of services for learners with learning differences/exceptionalities (i.e., marginalized learners, dyslexia, dysgraphia, literacy difficulties/disabilities, twice-exceptional, etc.) in order to:

(i) develop explicit, systematic reading instruction that is based on a convergence of research evidence and that is responsive to individual learner strengths and needs as well as cultural diversity, including learners whose first language is other than English, and learners with learning differences (i.e., dyslexia, dysgraphia, twice-exceptional, etc.);

(ii) guide the progress of gaining knowledge and skills necessary for literacy acquisition and require varied instruction and levels of instructional intensity as appropriate for grade level Texas Essential Knowledge and Skills, English Language Proficiency Standards, and Science of Teaching Reading competencies;

(iii) address issues and concepts related to the expected stages, patterns, and transfer of literacy competency from heritage language to second language;

(iv) apply evidenced-based practices for literacy instruction of Emergent Bilinguals that are based on a convergence of research for linguistically and culturally diverse learners;

(v) collaborate with other specialists to aid in assessing issues and procedures concerning Emergent Bilinguals' reading strengths and needs;

(vi) distinguish between language and learning differences of linguistically and culturally diverse learners and determine when additional assessment or intervention is necessary;

(vii) collaborate with other professionals to plan, implement, and monitor instruction that builds on learners' cultural, linguistic, and home backgrounds to enhance their oral language skills in English, and promote the transfer of skills from oral language to written language while maintaining literacy in the heritage language;

(viii) collaborate with all stakeholders to promote and maintain literacy in all languages respecting their individuality;

(ix) identify characteristics and instructional implications of learning differences/exceptionalities (i.e., marginalized learners, dyslexia, dysgraphia, literacy difficulties/disabilities, twice-exceptional, etc.) in relation to the development of literacy competence;

(x) gather information and analyze assessment data for learners with learning differences/exceptionalities (i.e., marginalized learners, dyslexia, dysgraphia, literacy difficulties/disabilities, twice-exceptional, etc.) and know when to seek assistance from a specialist;

(xi) implement and ensure procedures for monitoring and evaluating individualized education plans to facilitate placement of learners, matching individual needs to appropriate, aligned, and attainable services;

(xii) collaborate with all stakeholders in order to design and foster an inviting and inclusive learning environment sensitive to mental health wellness of students;

(xiii) curate current research and evidence-based materials and resources that offer multimodal/multidimensional methods of providing literacy instruction through reading and writing across all content areas (i.e., print rich environment, audio/visual, tactile/kinesthetic, etc.) and grade levels;

(xiv) integrate age appropriate (DAP), inclusive, and accessible digital and multimodal technologies in appropriate, safe, and effective ways;

(xv) collaborate with the campus/district media specialist, as needed, to locate and implement age appropriate (DAP), inclusive, and accessible digital learning opportunities in appropriate, safe, and effective ways; and

(xvi) collaborate with all stakeholders to develop appropriate MTSS (Tier I-III) instruction using knowledge of the intrinsic differences (linguistic, cognitive, and neurobiological) between competent and striving readers.

(4) Standard IV. Professional Leadership and Development: Reading Specialists serve as literacy content experts in multiple roles of professional leadership who are critical consumers of research, policy, and data to facilitate informed decision-making with groups/individuals regarding literacy practices; cultivate an environment for growth through modeling literacy leadership; coach and mentor all stakeholders in order to make informed literacy learning decisions; communicate with a variety of stakeholders for multiple purposes. The Reading Specialist demonstrates the knowledge, skills, and dispositions necessary to understand and apply advanced knowledge of:

(A) theories of shared leadership and coaching with educational stakeholders;

(B) ethical responsibilities and their role in a campus/district and impact on all stakeholders; and

(C) adult learning theories and professional development models in order to:

(i) communicate and model evidence-based practices based on current research for improved literacy instruction for all students;

(ii) make recommendations and advocate for literacy practices and policies based on a convergence of research evidence for school, district, and community;

(iii) communicate changes and impact of state/federal policies to all stakeholders;

(iv) prepare written documentation of school/district assessment data, analysis of students' strengths/needs, and instructional recommendations;

(v) facilitate and customize ongoing school and district- wide curriculum development, resource evaluation through a variety of theoretical and methodological lenses, and services associated with literacy programs (e.g., needs assessment, program development and evaluation, resource allocation, grant and proposal writing);

(vi) facilitate and customize interactions for all stakeholders in order to improve literacy instruction for students;

(vii) actively participate in literacy networks (e.g., local/state/national/international organizations, book studies, literacy social media pages, professional journals and publications, and conferences) and ongoing professional learning in order to continue to develop a knowledge of literacy and evidenced-based literacy practices;

(viii) apply evidence-based professional development, coaching/mentoring, and adult learning theories to support instructional practice;

(ix) model ethical professional behavior;

(x) work with educators, schools and districts to involve parents/guardians in cooperative efforts to support students' literacy development;

(xi) identify and prioritize professional development needs using the needs assessment;

(xii) plan and facilitate professional learning experiences in response to the needs assessment;

(xiii) collaborate with other educators to initiate, implement, and evaluate professional development;

(xiv) address the needs of professional development participants keeping in mind school constraints (e.g., class size, limited resources);

(xv) mentor and coach educators for the successful implementation of instructional practices addressed in professional development;

(xvi) monitor the outcomes of the professional learning for impact on instruction and/or achievement; and

(xvii) collaborate with all stakeholders in order to develop appropriate MTSS (Tier I-III) instruction using knowledge of the intrinsic differences (linguistic, cognitive, and neurobiological) between competent and striving readers.

§239.94. Requirements for the Issuance of the Reading Specialist Certificate.

To be eligible to receive the standard Reading Specialist certificate, a candidate must:

(1) successfully complete a reading specialist preparation program that meets the requirements of §239.92 of this title (relating to Preparation Program Requirements) and §239.93 of this title (relating to Standards Required for Reading Specialist Certificate);

(2) successfully complete the examination based on the standards identified in §239.93 of this title;

(3) hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(4) have two creditable years teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2).

§239.95. Requirements to Renew the Standard Reading Specialist Certificate.

An individual issued the standard Reading Specialist certificate under this title is subject to Chapter 232, Subchapter B, of this title (relating to Certificate Renewal and Continuing Professional Education Requirements).

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

Filed with the Office of the Secretary of State on December 19, 2022.

TRD-202205109

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 475-1497

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19 TAC §§239.93 - 239.95

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(2), which requires the SBEC to appoint an advisory committee composed of members of each class of certificate to recommend standards for that class to the Board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1)-(4), which require the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certification examination and each core subject covered by the generalist certification examination; and TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.031(a); 21.040(2); 21.041(a); 21.041(b)(1)-(4); 21.044; 21.048(a); and 21.054.

§239.93. Requirements for the Issuance of the Reading Specialist Certificate.

§239.94. Requirements to Renew the Standard Reading Specialist Certificate.

§239.95. Transition and Implementation 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 December 19, 2022.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING FOR ENGINEERS

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §§133.21, 133.23, 133.25, 133.27

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 133, Subchapter C, specifically §§133.21, 133.23, 133.25, and 133.27, regarding the application requirements for licensure of professional engineers in Texas. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 133 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

The proposed rules primarily include citation clarifications based on other rule amendments, and they clarify rule language. The amendments are related to revisions of Chapter 133, Subchapter H, which clarify the procedure to determine which license applications can be approved directly and which need additional review and information prior to approval. The amended rules add a procedure by which applicants whose applications have been initially rejected may seek review of the agency's decision to reject the application.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §133.21, concerning an Application for a Standard License, includes citation clarifications based on other rule amendments and clarifies rule language.

The proposed amendment to §133.23, concerning Applications from Former Standard License Holders, includes citation clarifications based on other rule amendments and clarifies rule language.

The proposed amendment to §133.25, concerning Applications from Engineering Educators, includes citation clarifications based on other rule amendments and clarifies rule language.

The proposed amendment to §133.27, concerning Applications for Temporary License for Engineers Currently Licensed Outside the United States, includes citation clarifications based on other rule amendments and clarifies rule language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated additional cost or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be to clarify and streamline the application review process and provide a pathway for applicants who contest a board decision on their application related to criminal convictions to have their cases heard at SOAH.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there is no anticipated economic costs to persons who are required to comply with the proposed rules.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not expand, limit, or repeal a regulation except to provide a clearer path for the review and processing of license applications and a path to contest board decisions on applications related to criminal convictions and have them heard at SOAH.

7. The proposed rules do not increase the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rule is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, via email to rules@pels.texas.gov, via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY

The rule amendments are proposed pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and to make and enforce all rules and regulations and bylaws consistent with the Act as are necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also proposed under Texas Occupations Code §§1001.302 and 1001.303, concerning license eligibility and application requirements.

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

§133.21. Application for Standard License.

(a) To be eligible for licensure as a professional engineer, one must submit a completed application.

(b) All persons must pass [~~have passed~~] the examination on the fundamentals of engineering or be eligible for a waiver from the examination on the fundamentals of engineering before submitting an application.

(c) Applicants must speak and write the English language. Proficiency in English may be evidenced by [~~possession of~~] an accredited degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550, a computer based score of at least 200 or an internet based score of at least 95, or other evidence such as significant academic or work experience in English acceptable to the executive director.

(d) Applicants for a license shall submit:

(1) an application in a format prescribed by the board and shall:

(A) list his or her full, legal [~~and complete~~] name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, current Driver's License issued by the State of Texas, court documents, or nationalization documents to substantiate other documentation submitted in the application; and

(B) list social security number, as required under the Texas Family Code, §231.302;

(2) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(4) supplementary experience record as required under §133.41 of this chapter (relating to Supplementary Experience Record);

(5) reference statements as required under §133.51 of this chapter (relating to Reference Providers);

(6) documentation of a passing score on [~~passage of~~] examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable;

(7) verification of a current license, if applicable;

(8) a completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter (relating to Professional Conduct and Ethics Examination);

(9) [~~scores of~~] TOEFL scores, if applicable;

(10) information regarding any [~~criminal history including any~~] judgments of convictions, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a [~~format~~] form prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(11) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act; and

(12) if applicable, written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, [~~the~~] TOEFL documentation, or a commercial evaluation of non-accredited degrees and a statement supporting the request(s).

(e) At the time the application is filed, an applicant may request in writing that any transcripts, reference statements, evaluations, experience records or other similar documentation previously submitted to the board be included in a current application; however, such documentation may not meet the requirements of the board at the time

of the subsequent application and new or updated information may be required.

(f) The NCEES record may be accepted as verification of an original transcript, licenses held, examinations taken, experience record and reference documentation to meet the conditions of subsection (d)(3) - (7) of this section.

(g) Once an application is accepted for review, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.

(h) An applicant who is a citizen of another country shall show sufficient documentation to the board to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(i) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to [~~Executive Director~~] Processing, Review, and Evaluation [~~and Processing~~] of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation [~~to clarify an application and~~] to ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

§133.23. Applications from Former Standard License Holders.

(a) A former standard license holder, whose original license has been expired for two or more years and who meets the current requirements for licensure, may apply for a new license. This section does not apply to a former holder of a temporary license.

(b) A former standard license holder applying for a license under the current law and rules must have the documentation requested in §133.21 of this chapter (relating to Application) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

(1) submit a new application in a format prescribed by the board;

(2) pay the application fee established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(4) submit a supplementary experience record that includes at least the last four years of engineering experience, which may include experience before the previous license expired;

(5) submit also at least one reference statement conforming to §133.51 of this chapter (relating to Reference Providers), in which a professional engineer shall verify at least four years of the updated supplementary experience record; and

(6) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act, unless previously submitted to the board.

(c) Once an application from a former standard license holder is received, the board will follow the procedures in §133.83 of this chapter (relating to [~~Executive Director~~] Processing, Review, and Evaluation [~~and Processing~~] of Applications) to review and approve or deny the application.

(d) Any license issued to a former standard license holder shall be assigned a new serial number.

(e) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to [~~Executive Director~~] Processing, Review, and Evaluation [~~and Processing~~] of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to [~~clarify an application and~~] ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

(f) Any enforcement action taken against an expired license holder in accordance with §139.31 (relating to Enforcement Actions for Violations of the Act or Board Rules) and any enforcement action that was pending when a license expired, and has remained expired for two or more years, may be considered in the evaluation of an application for a new license.

§133.25. Applications from Engineering Educators.

(a) Persons whose current, primary employment is as an engineering educator instructing engineering courses in a recognized institution of higher education in Texas, as defined in §131.2 [~~§131.81~~] of this title (relating to Definitions) are permitted to seek licensure utilizing an alternate application.

(b) The minimum educational qualifications are as follows:

(1) Earned doctoral degree in engineering from a college or university that offers an undergraduate or master's degree program in a related branch of engineering that is approved by the EAC/ABET as published in the current version of the ABET Accreditation Yearbook and or the current version of the ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or

(2) Earned doctoral degree in engineering or another related field of science or mathematics assessed and approved by the board.

(c) An engineering educator, applying under the alternate process, shall submit:

(1) an application in a format prescribed by the board;

(2) a supplementary experience record:

(A) For tenured faculty (or those approved for promotion), submit a dossier including a comprehensive resume or curriculum vitae containing educational experience, engineering courses taught, and description of research and scholarly activities in lieu of the supplementary experience record;

(B) For non-tenured faculty, a standard supplementary experience record with courses taught and/or other engineering experience shall be submitted;

(3) reference statements or letters from currently licensed professional engineers who have personal knowledge of the applicant's teaching and/or other creditable engineering experience. A reference provider may, in lieu of the reference statement, submit a letter of recommendation that, at a minimum, testifies to the credentials and abilities of the educator. The reference statements or letters of recommendation can be from colleagues within the department, college, or university; from colleagues from another university; or professional engineers from outside academia;

(4) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(5) a completed Texas Professional Conduct and Ethics Examination;

(6) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(7) Information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a form [~~format~~] prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(8) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act;

(9) documentation of passing scores on [~~passage of~~] examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable; and

(10) written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, if applicable.

(d) Once an alternative application from an engineering educator is received, the board will follow the procedures in §133.85 of this chapter (relating to [~~Board~~] Additional Review of and Action on Applications) to review and approve or deny the application.

(e) This section does not prohibit any engineering educator from applying for licensure under the standard application process.

(f) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to [~~Executive Director~~] Processing, Review, and Evaluation [~~and Processing~~] of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to [~~clarify an application and~~] ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

§133.27. Application for Temporary License for Engineers Currently Licensed Outside the United States.

(a) Pursuant to §1001.311 of the Act, a temporary license may be issued under this section for applicants who:

(1) are citizens of Australia, Canada, the Republic of Korea or the United Mexican States;

(2) are seeking to perform engineering work in Texas for three years or less;

(3) are currently licensed or registered in good standing with Engineers Australia, at least one of the jurisdictions of Canada, the Korean Professional Engineers Association or the United Mexican States; and

(4) meet the following experience requirements:

(A) Applicant currently registered in Australia, Canada or the Republic of Korea shall have at least seven years of creditable engineering experience, three of which must be practicing as a registered or chartered engineer with Engineers Australia, the Korean Professional Engineers Association or Engineers Canada and one of which must be working with or show familiarity with U.S. codes, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).

(B) Applicant currently licensed in United Mexican States shall:

(i) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(ii) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(b) The applicant applying for a temporary license from Australia, Canada, the Republic of Korea or the United Mexican States shall submit:

(1) an application in a format prescribed by the board;

(2) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(3) a supplementary experience record as required under §133.41(1) - (4) of this chapter (relating to Supplementary Experience Record) or a verified curriculum vitae and continuing professional development record;

(4) at least three reference statements as required under §133.51 and §133.53 of this chapter (relating to Reference Providers and Reference Statements);

(5) passing score of TOEFL as described in §133.21(c) of this chapter (relating to Application for Standard License);

(6) information regarding [~~any criminal history including any~~] judgments of convictions, deferred judgments or pre-trial diversions, for a misdemeanor or felony provided in a form [~~format~~] prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(7) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act;

(8) a statement describing any engineering practice violations, if any, together with documentation from the jurisdictional authority describing the resolution of those charges;

(9) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(10) pay the application fee established by the board; and

(11) a verification of a license in good standing from one of the jurisdictions listed in subsection (a)(3) of this section.

(c) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to [~~Executive Director~~] Processing, Review, and Evaluation [~~and Processing~~] of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to [~~clarify an application and~~] ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to §1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

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 December 14, 2022.

TRD-202205016
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 440-7723

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SUBCHAPTER F. REFERENCE DOCUMENTATION

22 TAC §133.53

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 133, Subchapter F, specifically §133.53 regarding reference documentation required for licensure of professional engineers in Texas. These proposed changes are referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 133 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

The proposed rule primarily includes citation clarifications based on other rule amendments and clarifies rule language. The amendments are related to revisions of Chapter 133, Subchapter H, which clarify the procedure to determine which license applications can be approved directly and which need additional review and information prior to approval.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §133.53, concerning reference statements, includes citation clarifications based on other rule amendments and clarifies rule language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Kinney has determined that for each year of the first five years the proposed rule is in effect, there is no estimated additional cost or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rule will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be to clarify and streamline the application review process and to provide a pathway for applicants who contest a board decision on their application to have their case heard at SOAH.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, there is no anticipated economic cost to persons who are required to comply with the proposed rule.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.

2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

5. The proposed rule does not create a new regulation.

6. The proposed rule does not expand, limit, or repeal a regulation except to provide a clearer path for the review and processing of license applications and a path to contest board decisions on applications to SOAH.

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

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

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rule is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rule is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, via email to rules@pels.texas.gov, via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY

The rule amendments are proposed pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also proposed under Texas Occupations Code §§1001.302 and 1001.303, concerning license eligibility and application requirements.

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

§133.53. Reference Statements.

(a) The applicant shall make available to each reference provider the board's reference statement form and a complete copy of the applicable portion(s) of the supplementary experience record.

(b) Persons providing reference statements verifying an applicant's engineering experience shall:

(1) complete and sign the reference statement in a format prescribed by the board; and

(2) review, evaluate, and sign all applicable portions of the supplementary experience record(s). The reference provider's signature indicates that he has read the supplementary experience record(s), that the record(s) are correct to the best of his knowledge, and that the experience is relevant to licensure. If the reference provider disagrees with or has comments or clarification to the information provided by the applicant, the reference provider should submit written comments or concerns to the board.

(3) for the purposes of this section, a reference statement and associated portions of the applicant's supplementary experience record submitted directly to the board through a secure method prescribed by the board will be considered "signed" as required in this subsection.

(c) The reference provider shall submit to the board both the reference statement and the supplementary experience record.

(d) For any reference statement to meet the requirements of the board, the reference statement must be secured. For a reference statement to be considered secure, the reference provider shall:

(1) place the completed reference statement and reviewed supplementary experience records in an envelope;

(2) seal the flap of the envelope;

(3) after sealing the envelope, the reference provider shall sign across the sealing edge of the flap of the envelope and cover the signature with transparent tape; and

(4) the reference provider shall return the sealed envelope to the applicant or transmit the documents directly to the board.

(e) Secured reference envelopes shall be submitted to the board by applicant or reference provider.

(f) Reference documents submitted directly to the board by the reference provider in a method prescribed by the board will meet the requirements of subsection (d) of this section.

(g) Evidence of retaliation by an applicant against a person who provides reference material for an application may be considered in the application process as described in §133.81[~~(d)~~] of this chapter (relating to Receipt of Applications [~~and Process~~]).

(h) The NCEES record reference documentation may be accepted as reference statements as specified in this section.

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

Filed with the Office of the Secretary of State on December 14, 2022.

TRD-202205017
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 440-7723

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §§133.81, 133.83, 133.85, 133.87, 133.89, 133.97, 133.101

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes rule amendments to and a new rule for 22 Texas Administrative Code, Chapter 133, Subchapter H, regarding the review process of applications and license issuance for professional engineers, specifically proposed amendments to §§133.81, relating to Receipt and Processing of Applications by the Board; 133.83, relating to Executive Director Review, Evaluation, and Processing of Applications; 133.85, relating to Board Review of and Action on Applications; 133.87, relating to Final Actions on Applications; 133.89, relating to Processing of Ad-

ministratively Withdrawn Applications; 133.97, relating to the Issuance of a License, and proposed new rule §133.101, relating to Proposed Actions on Applications. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 133 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act, specifically those provisions in Chapter 1001 that concern license applications. The proposed rules streamline and clarify the Board's application and review process for registration as a professional engineer. Plus, for an applicant whose application is proposed or recommended for denial due to a criminal conviction, the proposed rules add the opportunity for the applicant to request a hearing at the State Office of Administrative Hearings (SOAH) per Texas Occupations Code Chapter 53.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §133.81 clarify the process to receive an application for licensure as a professional engineer and align it with best practices including amending citations and clarification of actions that can occur if an application is submitted fraudulently per Texas Occupations Code §§1001.451 and 1001.452.

Proposed amendments to §133.83 streamline and clarify the process for reviewing license applications for engineers and align it with best practices. They address the correction of deficiencies and clarify that an application must be administratively complete before a technical review of the application and evaluation of an applicant's qualifications may begin. They also provide the steps the agency will take in reviewing an application, and they address reconsideration of denied applications.

Proposed amendments to §133.85 address additional review of license applications and authorize the executive director to propose a corrective action plan to address deficiencies in an application. The amendments also provide for the executive director to refer an application to the licensing committee, as appropriate, including when the deficiency in the application relates to an applicant's criminal history.

Proposed amendments to §133.87 streamline and clarify the process for review of license applications for engineers and align it with best practices. The proposed rule also adds an option for an applicant whose application is proposed to be denied by the Board because of criminal conviction to have 20 days to request, in writing, a hearing at SOAH in alignment with Texas Occupations Code Chapter 53.

Proposed amendments to §133.89 streamline and clarify the process for the administrative withdrawal of a license application.

Proposed amendments to §133.97 clarify the process for the issuance of a license including clarification of citations.

Proposed new rule §133.101 provides a table of suggested actions for the board and staff to adopt or recommend to applicants to address applications with deficiencies.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules, processes, and procedures for application review and including an option for an applicant whose application is proposed to be denied due to criminal history issues to be reviewed by SOAH, in alignment with Texas Occupations Code Chapter 53.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not expand, limit, or repeal a regulation except to provide a clearer path for the review and processing of registration applications and a path to contest board decisions on applications related to criminal convictions and have them heard at SOAH.

7. The proposed rules do not increase the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

CERTIFICATION OF LEGAL AUTHORITY

The agency certifies the rule has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

STATUTORY AUTHORITY AND SECTIONS AFFECTED

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The proposed rules affect and implement Texas Occupations Code, Sections 53.001 to .153, concerning consequences of criminal conviction.

§133.81. Receipt [~~and Processing~~] of Applications [~~by the Board~~].

(a) Upon receipt of an application for licensure and application fee at the board office, the board shall initiate a review of the credentials submitted. [~~Applicants who meet the licensure requirements shall be issued a license. Applicants who fail to meet one or more of the licensure requirements shall be denied a license.~~]

(b) Once an application and fee is received by the board, no refunds will be granted. By submitting an application and fee, the applicant attests that he or she has reviewed the education, experience, reference, and examination requirements for licensure as prescribed in this chapter and that he or she is qualified for a license based on these requirements.

(c) Once an application has entered the review process as described in §133.83 of this chapter (relating to Processing, [~~Executive Director~~] Review, and Evaluation [~~and Processing~~] of Applications), the executive director may determine that the application has been so altered by the addition of supplemental information that the description of the applicant's qualifications has been substantially revised. If the executive director determines that an application is substantially revised, the application will be treated as a new application and reviewed under the rules in place on the date of the determination. The executive director will provide an applicant with written notice if an application is determined to be substantially revised. If the applicant disagrees with a determination by the Executive Director, the applicant may make an appeal to the Licensing Committee.

(d) Once an application has been reviewed and before a license has been issued or denied, the board will not accept a new or amended application from the applicant. This does not prohibit the executive director, a board member, or the board from requesting, when they deem necessary, additional information from an applicant regarding his or her application.

(e) In the event that information bearing on the suitability of an applicant is discovered after submission of an application but prior to issuance of a license, the board may rescind or alter any previous decision, or hold the application in abeyance, or may deny an application until the suitability of the applicant is adequately established.

(f) An applicant may request an application to be withdrawn from consideration provided that the application has not been approved for licensure subject to passage of an examination [~~and the application has not begun circulation under the Board Review Process under §133.85 of this chapter (relating to Board Review of and Action on Applications)~~]. All requests for withdrawal must be submitted to the Board in writing.

(g) An applicant may only have one pending application on file with the Board at any time.

(h) Pursuant to Chapter 55, Texas Occupations Code, an application for license from a military service member, military veteran or military spouse shall be processed and reviewed as soon as practicable in accordance with subsection (a) of this section. All other applications will be processed in the order they were received.

(i) All information on an application must be filled out completely and accurately and attested to as complete and accurate by the applicant. Information submitted inaccurately, fraudulently, or deceitfully may result in action by the board up to and including denial of the application.

§133.83. Processing, [~~Executive Director~~] Review, and Evaluation [~~and Processing~~] of Applications.

All references to the executive director in this section shall allow for the delegation of authority by the executive director to other staff members. An application for licensure shall be handled in the following manner and order:

(1) The application is received at the board office.

(2) The executive director shall review the application for completeness.

(3) The executive director shall:

(A) accept the application as administratively complete and ready for technical evaluation [for processing and evaluating]; or

(B) acknowledge receipt of the application, [accept the application and] notify the applicant at the earliest possible time of deficiencies with the application, [of deficient information] and give the applicant 60 calendar days to correct deficiencies. If requested by the applicant, the [complete the application. The] executive director [or designee] may grant the applicant an additional 30 calendar day period to submit any information identified as necessary to complete the application. If the applicant does not submit the necessary [all] documents or correct deficiencies [required] in the time the board requires [allowed for such submittals], the application shall be administratively withdrawn [and further processing performed] in accordance with §133.89 of this chapter (relating to [Processing of] Administratively Withdrawn Applications).

(4) Once an application is administratively complete, the executive director shall perform a technical review and evaluate the qualifications found in the application. [and determine whether the applicant should interview with the licensing committee or whether the application should be:

[(A) approved,]

[(B) denied, or]

[(C) reviewed by the professional engineer members of the board in accordance with §133.85 of this chapter (relating to Board Review of and Action on Applications).]

(5) The executive director may approve the application if [without further board review unless the application is accompanied by]:

(A) all administrative and technical requirements have been met according to the appropriate application type as set out in Subchapter C of this chapter (relating to Professional Engineer License Application Requirements); [an unfavorable recommendation by one or more reference providers; or]

(B) all experience required for licensure is acceptable per Subchapter E of this chapter (relating to Experience); [a request for waiver of examination(s), except when the applicant is solely requesting waiver of the examination on the fundamentals of engineering.]

(C) all references meet the requirements of Subchapter F of this chapter (relating to Reference Documentation) and are considered by the agency staff to be favorable; and

(D) the application does not require further review under the criminal history background check requirements of §140.1 of this title (relating to Criminal History and Convictions - Engineers.)

(6) During the technical review of the application, the Executive Director may request additional information or require additional documentation to clarify an application and ensure eligibility as needed.

(7) [(6)] The executive director may deny an application for licensure [without further board review] if the applicant does not:

(A) submit the minimum number of [have sufficient] years of experience to qualify for licensure;[,]

(B) have an education acceptable to the board as prescribed in §133.31 of this chapter (relating to Educational Requirement for Applicants); or[,]

(C) pass an examination within the time allotted.[, or]

[(D) complete the application and it becomes administratively withdrawn for more than six months.]

(8) An applicant whose application has been denied by the executive director under this section shall have 20 calendar days from the date of the denial within which to request a reconsideration and provide additional information to address the deficiencies as set in §133.91 of this chapter (relating to Reconsideration of Denied Application or Requests for Examination Waivers).

(9) [(7)] An application for licensure that is not [cannot be] approved or denied by the executive director pursuant to paragraphs (5) or (7) [and (6)] of this section shall be subject to the procedure set out in §133.85 of this chapter (relating to Additional Review of and Action on Applications) and §133.87 of this chapter (relating to Final Action on Applications) [be circulated among the professional engineer board members].

§133.85. Additional [Board] Review of and Action on Applications.

An application that is not approved or denied per §133.83 of this chapter (related to Processing, Review, and Evaluation of Applications) shall be subject to the following process to determine eligibility for licensure. [The application shall be circulated randomly among the professional engineer board members if any of the conditions listed in paragraph (5)(A) or (B) of §133.83 of this chapter apply or on request of the executive director and shall be processed as follows:]

(1) The executive director will identify the deficiency in the application that prohibits approval as set out in §133.83(5) of this chapter and will draft a Corrective Action Plan (CAP) based on the table in §133.101 of this chapter (relating to Proposed Actions on Applications). The executive director may refer the application and draft CAP to the Licensing Committee for its consideration, before sending the CAP to the applicant, if deemed necessary. [The application is approved if the first reviewing board member agrees with an executive director recommendation of approval.]

(2) The executive director will present the applicant with the CAP in writing. The applicant will have 15 days to respond in writing to the CAP. The applicant shall: [If the executive director or the first reviewing board member determines that the application or a request for waiver of examinations should be denied or requests that the applicant appear before the licensing committee, then circulation shall continue until the application receives at least three votes for either approval or denial of the waiver request(s) or application or a personal interview of the applicant. If, after circulation among all the professional engineer board members, an application does not receive three like votes, the application shall then be referred to the licensing committee for a determination whether the application should be approved or denied or that additional information or a personal appearance of the applicant before the committee is necessary.]

(A) accept the terms of the proposed CAP by signing it; or

(B) request a personal interview with the Licensing Committee as set out in §133.93 of this chapter (relating to Personal Interviews of Applicants).

(3) If the applicant accepts the proposed CAP the applicant will be required to successfully complete all conditions of the CAP prior to approval of the application. [If there are three like votes among the professional engineer board members in favor of the application or if, after circulation among the board members and referral to the licensing committee, the licensing committee determines that an application should be approved, the executive director shall approve the application without further action by the board.]

(4) Criminal History Deficiency. If the executive director determines the deficiency relates to a violation of the criminal history background check requirements as set out in §140.1 of this title (relating to Criminal History and Convictions - Egineers), the executive director shall refer the application to the Licensing Committee for personal interview without first offering the applicant a proposed CAP. [~~If there are three like votes among the professional engineer board members to deny the application, the licensing committee determines that an application should be denied, or the licensing committee is unable to reach a decision, the application and any such determination shall be presented to the full board at its next regularly scheduled meeting.~~]

§133.87. Final Action on Applications.

(a) Upon approval of an application by the executive director, the successful completion of the requirements of a Corrective Action Plan (CAP), or the successful completion of the requirements of the Licensing Committee and full board [~~the licensing committee, or the board~~] in a manner provided in this subchapter, the executive director shall:

(1) issue a license subject to the applicant's taking and passing the examination on the principles and practice of engineering according to §133.67 of this chapter (relating to Examination on the Principles and Practice of Engineering); or

(2) issue a license to an applicant who has passed the examination on the principles and practice of engineering or who has had that examination waived; and[~~.~~]

(3) report all approved applications to the Board.

[~~(b) The board shall deny an application if any of the following occurs:~~]

[~~(1) the application has been administratively withdrawn for a period of six months;~~]

[~~(2) pursuant to §133.85 of this chapter (relating to Board Review of and Action on Applications) three of the professional engineer board members vote to deny an application on the basis that the applicant does not meet the requirements of §1001.302 of the Act;~~]

[~~(3) a majority of the full board voted to deny an application on the basis that the applicant does not meet the requirements of §1001.302 of the Act; or~~]

[~~(4) the applicant did not pass the examination on the principles and practice of engineering in the prescribed time.~~]

(b) [~~(c)~~] The board by vote shall confirm the action taken at its next regularly scheduled meeting.

(c) [~~(d)~~] The executive director shall advise the applicant in writing of any decision of the executive director, the Licensing Committee [~~licensing committee~~], or the board, as applicable, within 20 days of the decision.

(d) An applicant whose application has been denied by the Board based on criminal conviction, shall have 20 days from the date of the denial within which to request in writing a hearing at the State Office of Administrative Hearings (SOAH).

§133.89. [~~Processing of~~] Administratively Withdrawn Applications.

(a) An application may go into Administratively Withdrawn status per §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications.

(b) [~~(a)~~] To reactivate an administratively withdrawn application, the applicant, no later than six months after the application goes into Administratively Withdrawn status, must submit:

(1) a reactivation fee as established by the board;

(2) a new application form complete and with signatures;

(3) updated supplementary experience records for the time period since the application was first submitted; and

(4) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act, unless previously submitted to the board.

[~~(b) If the application has been administratively withdrawn for a period of six months, the application shall be denied.~~]

(c) An application that goes into Administratively Withdrawn status will be deemed to have been withdrawn by the applicant six months after it enters that status unless, before the six-month period expires, the applicant corrects all deficiencies and submits all necessary documentation to make the application complete and ready for technical review.

(d) An application that is deemed to have been withdrawn by the applicant per subsection (c) of this section cannot be reactivated. To be considered for a license, an applicant will be required to submit a new application.

(e) Applications that have been deemed to have been withdrawn by the applicant will be reported to the Board.

§133.97. Issuance of License.

(a) A license as a professional engineer shall be issued upon the approval of the application pursuant to §133.87[~~(a)~~] of this chapter (relating to Final Action on Applications).

(b) The new license holder shall be assigned a serial number issued consecutively in the order of approval.

(c) The executive director shall notify the new license holder in writing of:

(1) the license issuance;

(2) the license serial number; and

(3) the instructions to obtain a seal.

(d) Within 60 days from the written notice from the executive director of license issuance, the new license holder shall obtain a seal(s) that is consistent with the Board authorized-design in §137.31 of this title (relating to Seal Specifications).

(e) Failure to comply with subsection [~~paragraph~~] (d) of this section is a violation of board rules and may [~~shall~~] be subject to sanctions.

(f) The printed license shall bear the signature of the chair and the secretary of the board, bear the seal of the board, and bear the full name and license number of the license holder.

(g) The printed license shall be uniform and of a design approved by the board. Any new designs for a printed license shall be made available to all license holders upon request.

(h) A license issued by the board is as a professional engineer, regardless of branch designations or specialty practices. Practice is restricted only by the license holder's professional judgment and applicable board rules regarding professional practice and ethics.

(i) The records of the board shall indicate a branch of engineering considered by the board or license holder to be a primary area of competency. A license holder shall indicate a branch of engineering by providing:

(1) a transcript showing a degree in the branch of engineering;

(2) a supplementary experience record documenting at least 4 years of experience in the branch of engineering and verified by at least one PE reference provider that has personal knowledge of the license holder's character, reputation, suitability for licensure, and engineering experience; or

(3) verification of successful passage of the examination on the principles and practice of engineering in the branch of engineering.

(j) A license holder may request that the board change the primary area of competency or indicate additional areas of competency by providing one or more of the items listed in paragraphs (1) - (3) of this subsection:

(1) a transcript showing an additional degree in the new branch other than the degree used for initial licensure;

(2) a supplementary experience record documenting at least 4 years of experience in the new branch verified by at least one PE reference provider who has documented competence in the engineering discipline being added that has personal knowledge of the license holder's character, reputation, suitability for licensure, and engineering experience; or

(3) verification of successful passage of the examination on the principles and practice of engineering in the new branch.

(k) All requests relating to branch listings for areas of competency require the review and approval of the executive director or the executive director's designee.

§133.101. Proposed Actions on Applications.

The following is a table of suggested actions the board may impose against applicants for specific circumstances related to an application. The action may be less than or greater than the suggested actions shown in the following table.
Figure: 22 TAC §133.101

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 December 14, 2022.

TRD-202205018
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 440-7723

♦ ♦ ♦

22 TAC §133.99

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes the repeal of 22 Texas Administrative Code §133.99, relating to Processing of Applications with a Criminal Conviction.

BACKGROUND AND SUMMARY

The rule that is proposed for repeal contains the current policies and procedures for the evaluation of applications referring to a criminal conviction, including criteria and factors to be considered per Texas Occupations Code, Chapter 53. Adoption of other rules that are published as proposed rules in this same edition of *Texas Register* will make §133.99 unnecessary. Proposed new rules 22 Texas Administrative Code §§140.1 and 140.3 address the effect of criminal conviction on applications filed with the Board, with engineering and land surveying applications addressed in separate rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed repeal is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed repeal.

Dr. Kinney has determined that for each year of the first five years the proposed repeal is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed repeal.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed repeal will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed repeal is in effect, the public benefit will be clarification of rules, processes, and procedures for application review and including an option for an applicant whose application is proposed to be denied due to criminal history issues to be reviewed by SOAH in alignment with Texas Occupations Code, Chapter 53.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because no new requirements are part of the proposed repeal.

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

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

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

The proposed repeal is not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed repeal does not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed repeal does not create or eliminate a government program.

2. Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed repeal does not require an increase or decrease in fees paid to the agency.

5. The proposed repeal does not create a new regulation.

6. The proposed repeal does not expand an existing regulation but does remove the requirement that new licensees submit a copy of their seal to the board.

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

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

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed repeal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY

The proposed repeal is proposed pursuant to Texas Occupations Code §§1001.201 and .202, which authorize the Board to regulate engineering and land surveying and to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The proposed repeal affects Texas Occupations Code, sections 53.001 to .153, concerning consequences of criminal conviction.

§133.99. Processing of Applications with a Criminal Conviction.

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 December 13, 2022.

TRD-202205020
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 440-7723

CHAPTER 134. LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS
SUBCHAPTER C. LAND SURVEYOR APPLICATION REQUIREMENTS

22 TAC §§134.21, 134.23, 134.25

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 134, Subchapter C, specifically §§134.21, 134.23, and 134.25, regarding the application requirements for registration of professional land surveyors in Texas. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 134 implement Texas Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act.

The proposed rules primarily include citation clarifications based on other rule amendments, and they clarify rule language. The amendments are related to revisions of Chapter 134, Subchapter H, which clarify the procedure to determine which registration applications can be approved directly and which need additional review and information prior to approval. The amended rules add a procedure by which applicants whose applications have been initially rejected may seek review of the agency's decision to reject the application.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §134.21, concerning an Application for a Standard Registration, includes citation clarifications based on other rule amendments and clarifies rule language.

The proposed amendment to §134.23, concerning Applications from Standard Registration Holders, includes citation clarifications based on other rule amendments and clarifies rule language.

The proposed amendment to §134.25, concerning Applications from Out-of-State Registration Holders, includes citation clarifications based on other rule amendments and clarifies rule language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated additional cost or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be to clarify and streamline the application review process and provide a pathway for applicants who contest a board decision on their application related to criminal convictions to have their cases heard at SOAH.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there is no anticipated economic costs to persons who are required to comply with the proposed rules.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not expand, limit, or repeal a regulation except to provide a clearer path for the review and processing of registration applications and a path to contest board decisions on applications related to criminal convictions and have them heard at SOAH.

7. The proposed rules do not increase the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rule is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, via email to rules@pels.texas.gov, via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY

The rule amendments are proposed pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and to make and enforce all rules and regulations and bylaws consistent with the Act as are necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also proposed under Texas Occupations Code §§1071.252, 1071.254, and 1071.259, concerning registration eligibility and application requirements.

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

§134.21. Application for Standard Registration.

(a) To be eligible for registration as a registered professional land surveyor (RPLS), an individual must submit a completed application.

(b) All applicants must hold a current Texas Surveyor-In-Training (SIT) certification and pass [~~have passed~~] the examination on the fundamentals of surveying before submitting an application for registration as an RPLS.

(c) Applicants must speak and write the English language. Proficiency in English may be evidenced by [~~possession of~~] an accredited degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550, a computer based score of at least 200, or an internet-based score of at least 95, or other evidence such as significant academic or work experience in English, that is acceptable to the executive director.

(d) Applicants for a registration shall submit:

(1) an application in a format prescribed by the board including:

(A) his or her full, legal [~~and complete~~] name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, current Driver's License issued by the State of Texas, court documents, or nationalization documents to substantiate other documentation submitted in the application; and

(B) his or her social security number, as required under the Texas Family Code, §231.302;

(2) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) proof of educational credentials pursuant to Subchapter D of this chapter (relating to Education);

(4) a supplementary experience record that includes at least two years of surveying experience as required under §134.41 of this chapter (relating to Supplementary Experience Record);

(5) a minimum of three reference statements conforming to Subchapter F of this chapter (relating to Reference Documentation);

(6) documentation of a passing score on [~~passage of~~] examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §134.61(g) of this chapter (relating to Surveying Examinations), if applicable;

(7) verification of a current license from another jurisdiction, if applicable;

(8) [~~scores of~~] TOEFL scores, if applicable;

(9) information regarding any [~~criminal history including any~~] judgments of convictions, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a form [~~format~~] prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and

(10) for applications submitted on or after September 1, 2020, documentation of submittal of fingerprints for criminal history record check as required by Texas Occupations Code §1001.272.

(e) At the time the application is filed, an applicant may request in writing that any transcripts, reference statements, evaluations, experience records or other similar documentation previously submitted to the board be included in a current application; however, new or updated information may be required.

(f) The NCEES record may be accepted as verification of an original transcript, licenses held, examinations taken, experience record and reference documentation to meet the conditions of subsection (d)(3) - (7) of this section.

(g) Once an application is accepted for review, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.

(h) An applicant who is a citizen of another country shall show sufficient documentation to the board to verify the immigration status for the determination of his or her eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(i) Once an application under this section is accepted for review, the board will follow the procedures in §134.83 of this chapter (relating to [~~Executive Director~~] Processing, Review, and Evaluation [~~and Processing~~] of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to [~~clarify an application and~~] ensure eligibility as needed. Pursuant to Texas Occupations Code §1001.453, the board may review the license holder's status and take action if the license was obtained by fraud or error or if the license holder may pose a threat to the public's health, safety, or welfare.

§134.23. Application from Standard Registration Holders

(a) A former standard registration holder, whose original license has been expired for two or more years and who meets the current requirements for licensure, may apply for a new registration.

(b) A former standard registration holder applying for a registration under the current law and rules must have the documentation requested in §134.21 of this chapter (relating to Application for Standard Registration) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

(1) submit a new application in a format prescribed by the board;

(2) pay the application fee established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) submit an updated supplementary experience record that includes at least the last two years of surveying experience, which may include experience before the previous license expired;

(4) submit a minimum of three reference statements conforming to Subchapter F of this chapter (relating to Reference Documentation), in which a registered professional land surveyor shall verify at least two years of the updated supplementary experience record; and

(5) For applications submitted on or after September 1, 2020, documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act, unless previously submitted to the board.

(c) Once an application from a former standard registration holder is received, the board will follow the procedures in §134.83 of this chapter (relating to [~~Executive Director~~] Processing, Review, and

Evaluation [~~and Processing~~] of Applications) to review and approve or deny the application.

(d) Any license registration issued to a former standard registration holder shall be assigned a new serial number.

(e) Once an application under this section is accepted for review, the board will follow the procedures in §134.83 of this chapter to review and approve or deny the application. The board may request additional information or require additional documentation to [~~clarify an application and~~] ensure eligibility as needed. Pursuant to Texas Occupations Code §1001.453, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

§134.25. Application from Out-of-State Registration Holders

(a) An applicant who holds a license or registration as a professional land surveyor from another state or U.S. jurisdiction having registration or licensing requirements substantially equivalent to the requirements of Texas may apply for a standard license.

(b) The Board shall determine whether the licensing or registration standards of the governmental authority under which the reciprocal applicant is licensed or registered are substantially equivalent to those standards required in the State of Texas at the time of licensure by the reciprocal state.

(c) If the Board determines that such standards are not substantially equivalent, the Board may require the reciprocal applicant to take and pass an examination not to exceed four (4) hours as required for applicants under §1071.259 of the Surveying Act.

(d) To be eligible for registration as a registered professional land surveyor (RPLS), one must submit a completed application.

(e) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550, a computer based score of at least 200 or an internet based score of at least 95 or other evidence such as significant academic or work experience in English acceptable to the executive director.

(f) Applicants for a registration shall submit:

(1) an application in a format prescribed by the board and shall:

(A) list his or her full, legal and complete name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, current Driver's License issued by the State of Texas, court documents, or nationalization documents to substantiate other documentation submitted in the application; and

(B) list social security number, as required under the Texas Family Code, §231.302;

(2) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) proof of educational credentials pursuant to Subchapter D of this chapter (relating to Education);

(4) supplementary experience record as required under §134.41 of this chapter (relating to Supplementary Experience Record);

(5) reference statements as required under Subchapter F of this chapter (relating to Reference Documentation); and

(6) documentation of passing scores on [~~passage of~~] examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §134.61(g) of this chapter (relating to Surveying Examinations);

(7) verification of a current license from another jurisdiction;

(8) [~~scores of~~] TOEFL scores, if applicable;

(9) information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a form [~~format~~] prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and

(10) for applications submitted on or after September 1, 2020, documentation of submittal of fingerprints for criminal history record check as required by Texas Occupations Code §1001.272.

(g) The NCEES record may be accepted as verification of an original transcript, licenses held, examinations taken, experience record and reference documentation to meet the conditions of subsection (d)(3) - (7) of this section.

(h) Once an application is accepted for review, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.

(i) An applicant who is a citizen of another country shall show sufficient documentation to the board to verify the immigration status for the determination of his or her eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(j) Once an application under this section is accepted for review, the board will follow the procedures in §134.83 of this chapter (relating to [~~Executive Director~~] Processing, Review, and Evaluation [~~and Processing~~] of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to [~~clarify an application and~~] ensure eligibility as needed. Pursuant to Texas Occupations Code §1001.453 the board may review the license holder's status and take action if the license was obtained by fraud or error or if the license holder may pose a threat to the public's health, safety, or welfare.

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 December 13, 2022.

TRD-202205021
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 440-7723

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SUBCHAPTER F. REFERENCE DOCUMENTATION

22 TAC §134.53

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 134, Subchapter F, specifically §134.53 regarding reference documentation required for registration of professional land surveyors in Texas. These proposed changes are referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 134 implement Texas Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act.

The proposed rule primarily includes citation clarifications based on other rule amendments and clarifies rule language. The amendments are related to revisions of Chapter 134, Subchapter H, which clarify the procedure to determine which license applications can be approved directly and which need additional review and information prior to approval.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §134.53, concerning reference statements, includes citation clarifications based on other rule amendments and clarifies rule language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Kinney has determined that for each year of the first five years the proposed rule is in effect, there is no estimated additional cost or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rule will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be to clarify and streamline the application review process and to provide a pathway for applicants who contest a board decision on their application to have their case heard at SOAH.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, there is no anticipated economic cost to persons who are required to comply with the proposed rule.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.

2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

5. The proposed rule does not create a new regulation.

6. The proposed rule does not expand, limit, or repeal a regulation except to provide a clearer path for the review and processing of license applications and a path to contest board decisions on applications to SOAH.

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

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

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rule is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rule is not a "major environmental rule,"

as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, via email to rules@pels.texas.gov, via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY

The rule amendments are proposed pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also proposed under Texas Occupations Code §§1071.252, 1071.254, and 1071.259, concerning registration eligibility and application requirements.

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

§134.53. Reference Statements.

(a) The applicant shall make available to each reference provider, the board's reference statement form and a complete copy of the applicable portion(s) of the supplementary experience record.

(b) Persons providing reference statements verifying an applicant's land surveying experience shall:

(1) complete and sign the reference statement in a format prescribed by the board; and

(2) review, evaluate, and sign all applicable portions of the supplementary experience record(s). The reference provider's signature indicates that he has read the supplementary experience record(s), that the record(s) are correct to the best of his knowledge, and that the experience is relevant to registration. If the reference provider disagrees with or has comments or clarification to the information provided by the applicant, the reference provider should submit written comments or concerns to the board.

(3) For the purposes of this section, a reference statement and associated portions of the applicant's supplementary experience record submitted directly to the board through a secure method prescribed by the board will be considered "signed" as required in this subsection.

(c) The reference provider shall submit to the board both the reference statement and the supplementary experience record.

(d) For any reference statement to meet the requirements of the board, the reference statement must be secured. For a reference statement to be considered secure, the reference provider shall:

(1) place the completed reference statement and reviewed supplementary experience records in an envelope;

(2) secure the flap of the envelope to prevent tampering; and

(3) the reference provider shall return the sealed envelope to the applicant or transmit the documents directly to the board.

(e) Secured reference envelopes shall be submitted to the board by applicant or reference provider.

(f) Reference documents submitted directly to the board by the reference provider in a method prescribed by the board will meet the requirements of subsection (d) of this section.

(g) Evidence of retaliation by an applicant against a person who provides reference material for an application may be considered in the application process as described in §134.81 of this chapter (relating to Receipt [~~and Processing~~] of Applications [~~by the Board.~~]).

(h) The NCEES record reference documentation may be accepted in lieu of reference statements as specified in this section.

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

Filed with the Office of the Secretary of State on December 13, 2022.

TRD-202205022
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 440-7723

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND REGISTRATION ISSUANCE

22 TAC §§134.81, 134.83, 134.85, 134.87, 134.89, 134.97, 134.101

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes rule amendments and new rules for to 22 Texas Administrative Code, Chapter 134, Subchapter H, regarding the review process of applications and registration issuance for professional land surveyors, specifically proposed amendments to §§134.81, relating to Receipt and Processing of Applications by the Board; 134.83, relating to Executive Director Review, Evaluation, and Processing of Applications; 134.87, relating to Final Actions on Applications; 134.89, relating to Processing of Administratively Withdrawn Applications, and 133.97, relating to Issuance of a Registration. The Board also proposes new rule §134.85, relating to Board Review of and Action on Applications; and new rule §134.101, relating to Proposed Actions on Applications. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 134 implement Texas Occupations Code, Chapter 1071, specifically those provisions in Chapter 1071 that concern registration applications. The proposed rules streamline and clarify the Board's application and review process for registration as a professional land surveyor. Plus, for an applicant whose application is proposed to be denied due to a criminal-history issue, the proposed rules add the opportunity for the applicant to request a hearing at the State Office of Administrative Hearings (SOAH) per Texas Occupations Code, Chapter 53.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §134.81 clarify the process to receive an application for registration as a profession land surveyor and

align it with best practices including amending citations and clarification of actions that can occur if an application is submitted fraudulently per Texas Occupations Code §§1001.451 and 1001.452.

Proposed amendments to §134.83 streamline and clarify the process for reviewing applications for registration of land surveyors and align it with best practices. It addresses the correction of deficiencies, and it clarifies an application must be administratively complete before a technical review of the application and evaluation of an applicant's qualifications may begin. It also provides the steps the agency will take in reviewing an application and addresses reconsideration of denied applications.

Proposed new §134.85 streamlines and clarifies the process for reviewing registration applications for land surveyors and will align it with best practices. The new rule describes a step-by-step process, provides for a corrective action plan, when appropriate, and provides for an application to be referred to the licensing committee when appropriate.

Proposed amendments to §134.87 streamline and clarify the process for registration application review for land surveyors and align it with best practices. The proposed rule also adds an option for an applicant whose application is proposed to be denied by the Board to have 20 days to request in writing a hearing at SOAH in alignment with Texas Occupations Code Chapter 53.

Proposed amendments §134.89 streamline and clarify the process related to the administrative withdrawal of an application for registration.

Proposed amendments to §134.97 clarify the process for the issuance of a license including clarification of citations.

Proposed new rule §133.101 provides a table of suggested actions for the board and staff to recommend to applicants to address applications with deficiencies.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules, processes, and procedures for application review and including an option for an applicant whose application is proposed to be denied due to criminal history issues to be reviewed by SOAH, in alignment with Texas Occupations Code Chapter 53.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not expand, limit, or repeal a regulation except to provide a clearer path for the review and processing of registration applications and a path to contest board decisions on applications related to criminal convictions and have them heard at SOAH.

7. The proposed rules do not increase the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITYAND SECTIONS AFFECTED

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The proposed rules affect and implement Texas Occupations Code, Sections 53.001 to .153, concerning consequences of criminal conviction.

§134.81. Receipt [~~and Processing~~] of Applications [~~by the Board~~].

(a) Upon receipt of an application for registration and application fee at the board office, the board shall initiate a review of the credentials submitted. [~~Applicants who meet the registration requirements shall be issued a registration. Applicants who fail to meet one or more of the registration requirements shall be denied a registration.~~]

(b) Once an application and fee is received by the board, no refunds will be granted. By submitting an application and fee, the applicant attests that he or she has reviewed the education, experience, reference, and examination requirements for registration as prescribed in this chapter and that he or she is qualified for a registration based on these requirements.

(c) Once an application has entered the review process as described in §134.83 of this chapter (relating to Processing, [~~Executive Director~~] Review, and Evaluation [~~and Processing~~] of Applications), the executive director may determine that the application has been so altered by the addition of supplemental information that the description of the applicant's qualifications has been substantially revised. If the executive director determines that an application is substantially revised, the application will be treated as a new application and reviewed under the rules in place on the date of the determination. The executive director will provide an applicant with written notice if an application is determined to be substantially revised. If the applicant disagrees with a determination by the Executive Director, the applicant may make an appeal to the Licensing Committee.

(d) Once an application has been reviewed and before a registration has been issued or denied, the board will not accept a new or amended application from the applicant. This does not prohibit the executive director, a board member, or the board from requesting, when they deem necessary, additional information from an applicant regarding his or her application.

(e) In the event that information bearing on the suitability of an applicant is discovered after submission of an application but prior to issuance of a registration, the board may rescind or alter any previous decision, or hold the application in abeyance, or may deny an application until the suitability of the applicant is adequately established.

(f) An applicant may request an application to be withdrawn from consideration provided that the application has not been approved for registration subject to passage of an examination. All requests for withdrawal must be submitted to the board in writing.

(g) An applicant may only have one pending application on file with the board at any time.

(h) Pursuant to Chapter 55, Texas Occupations Code, an application for registration from a military service member, military veteran or military spouse shall be processed and reviewed as soon as practicable in accordance with subsection (a) of this section. All other applications will be processed in the order they were received.

(i) All information on an application must be filled out completely and accurately and attested to as complete and accurate by the applicant. Information submitted inaccurately, fraudulently, or deceitfully may result in action by the board up to and including denial of the application.

§134.83. [~~Executive Director~~] Processing, Review, and Evaluation [~~and Processing~~] of Applications

All references to the executive director in this section shall allow for the delegation of authority by the executive director to other staff members. An application for licensure [~~registration~~] shall be handled in the following manner and order:

(1) The application is received at the board office.

(2) The executive director shall review the application for completeness.

(3) The executive director shall:

(A) accept the application as administratively complete and ready for technical evaluation [~~for processing and evaluating~~]; or

(B) acknowledge receipt of the application, [~~accept the application and~~] notify the applicant at the earliest possible time of deficiencies with the application, [~~of deficient information~~] and give the applicant 60 calendar days to correct deficiencies. If requested by the applicant, the [~~complete the application.~~] [~~The~~] executive director [~~or designee~~] may grant the applicant an additional 30 calendar [-] day period to submit any information identified as necessary to complete the application. If the applicant does not submit the necessary [~~all~~] documents or correct deficiencies [~~required~~] in the time the board requires [~~allowed for such submittals~~], the application shall be administratively withdrawn [~~and further processing performed~~] in accordance with §134.89 of this chapter (relating to [~~Processing of~~] Administratively Withdrawn Applications).

(4) Once an application is administratively complete, the executive director shall perform a technical review and evaluate the qualifications found in the application. [~~and determine whether the applicant should interview with the licensing and registration committee or whether the application should be:~~

[~~(A) approved;~~]

[~~(B) denied; or~~]

[~~(C) referred to the Licensing and Registration Committee in accordance with §134.93 of this chapter (relating to Personal Interviews of Applicants).~~]

(5) The executive director may approve the application if: [~~without further board review unless the application is accompanied by an unfavorable recommendation by one or more reference providers.~~]

(A) all administrative and technical requirements have been met according to the appropriate application type as set out in Subchapter C of this chapter (relating to Land Surveyor Application Requirements);

(B) all experience required for licensure is acceptable per Subchapter E of this chapter (relating to Experience);

(C) all references meet the requirements of Subchapter F of this chapter (relating to Reference Documentation) and are considered by the agency staff to be favorable; and

(D) the application does not require further review under the criminal history background check requirements of §140.3 of this title (relating to Criminal History and Convictions - Surveyors.)

(6) During the technical review of the application, the Executive Director may request additional information or require additional documentation to clarify an application and ensure eligibility as needed.

(7) [~~(6)~~] The executive director may deny an application for licensure [~~without further board review~~] if the applicant does not:

(A) submit the minimum number of [~~have sufficient~~] years of experience to qualify for registration;

(B) have an education acceptable to the board as prescribed in §134.31 of this chapter (relating to Educational Requirement for Applicants); or

(C) pass an examination within the time allotted. [~~; or~~]

[~~(D) complete the application and it becomes administratively withdrawn for more than six months.~~]

(8) An applicant whose application has been denied by the executive director under this section shall have 20 calendar days from the date of the denial within which to request a reconsideration and provide additional information to address the deficiencies as set in §134.91 of this chapter (relating to Reconsideration of Denied Applications).

(9) [~~(7)~~] An application for registration that is not [~~cannot be~~] approved or denied by the executive director pursuant to paragraphs (5) or (7) [~~and (6)~~] of this section shall be subject to the procedure set out in §134.85 of this chapter (relating to Additional Review of and Action on Applications) and §134.87 of this chapter (relating to Final Action on Applications)[~~be referred to the Licensing and Registration Committee in accordance with 134.93 of this chapter (relating to Personal Interviews of Applicants)~~].

§134.85. Additional Review of and Action on Applications.

An application that is not approved or denied per §134.83 of this chapter (related to Processing, Review, and Evaluation of Applications) shall be subject to the following process to determine eligibility for registration.

(1) The executive director will identify the deficiency in the application that prohibits approval as set out in §134.83(5) of this chapter and will draft a Corrective Action Plan (CAP) based on the table in §134.101 of this chapter (relating to Proposed Actions on Applications). The executive director may refer the application and draft CAP to the Licensing Committee for its consideration, before sending the CAP to the applicant, if deemed necessary.

(2) The executive director will present the applicant with the CAP in writing. The applicant will have 15 days to respond in writing to the CAP. The applicant shall:

(A) accept the terms of the proposed CAP in writing; or

(B) request a personal interview with the Licensing Committee as set out in §134.93 of this chapter (relating to Personal Interviews of Applicants).

(3) If the applicant accepts the proposed CAP the applicant will be required to successfully complete all conditions of the Recommendation for CAP prior to approval of the application.

(4) Criminal History Deficiency. If the executive director determines the deficiency relates to a violation of the criminal history background check requirements as set out in §140.3 of this title (relating to Criminal History and Convictions - Surveyors), the executive director shall refer the application to the Licensing Committee for personal interview without first offering the applicant a proposed CAP.

§134.87. Final Action on Applications.

(a) Upon approval of an application by the executive director, the successful completion of the requirements of a Corrective Action Plan (CAP), or the successful completion of the requirements of the Licensing Committee and full board [~~the licensing and registration committee, or the board~~] in a manner provided in this subchapter, the executive director shall:

(1) issue a registration subject to the applicant's taking and passing the examination on the principles and practice of surveying according to §134.67 of this chapter (relating to Examination on the Principles and Practice of Surveying); or

(2) issue a registration to an applicant who has passed the examination on the principles and practice of surveying; and[~~.~~]

(3) report all approved applications to the Board.

(b) The board will consider applications presented to it and recommendations it receives from the Licensing Committee.

[~~(b) The board shall deny an application if any of the following occurs:~~]

[~~(1) the application has been administratively withdrawn for a period of six months;~~]

[~~(2) a majority of the full board voted to deny an application on the basis that the applicant does not meet the requirements of the Surveying Act and board rules; or~~]

[~~(3) the applicant did not pass the examination on the principles and practice of surveying in the prescribed time.~~]

[~~(c) The board by vote shall confirm the action taken on a registration at its next regularly scheduled meeting.~~]

(c) [~~(d)~~] The executive director shall advise the applicant in writing of any decision of the executive director, the Licensing Committee [~~licensing and registration committee~~], or the board, as applicable, within 20 days of the decision.

(d) An applicant whose application has been denied by the Board based on criminal conviction shall have 20 days from the date of the denial within which to request in writing a hearing at the State Office of Administrative Hearings (SOAH).

§134.89. [~~Processing of~~] Administratively Withdrawn Applications.

(a) An application may be placed in Administratively Withdrawn status per §134.83 of this chapter (relating to Processing, Review, and Evaluation of Applications.

(b) [~~(a)~~] To reactivate an administratively withdrawn application, the applicant, no later than six months after the application is placed in Administratively Withdrawn status, must submit:

(1) a reactivation fee as established by the board;

(2) a new application form complete and with signatures;

(3) updated supplementary experience records for the time period since the original application was first submitted; and

(4) documentation of submittal of fingerprints for criminal history record check as required by Texas Occupations Code §1001.272, unless previously submitted to the board.

[(b) If the application has been administratively withdrawn for a period of six months, the application shall be denied.]

(c) An application that has been placed in Administratively Withdrawn status will be deemed to have been withdrawn by the applicant six months after it enters that status unless, before the six-month period expires, the applicant corrects all deficiencies and submits all necessary documentation to make the application complete and ready for technical review.

(d) An application that is deemed to have been withdrawn by the applicant per subsection (c) of this section cannot be reactivated. To be considered for a registration, an applicant will be required to submit a new application.

(e) Applications that have been deemed to have been withdrawn by the applicant will be reported to the Board.

§134.97. Issuance of Registration.

(a) A registration as a registered professional land surveyor shall be issued upon the approval of the application pursuant to §134.87[(a)] of this chapter (relating to Final Action on Applications).

(b) The new registration holder shall be assigned a serial number issued consecutively in the order of approval.

(c) The executive director shall notify the new registration holder in writing of:

(1) the registration issuance;

(2) the registration serial number; and

(3) the instructions to obtain a seal.

(d) Within 60 days from the written notice from the executive director of registration issuance, the new registration holder shall obtain a seal(s) that is consistent with the Board-authorized design in §138.31 of this title [chapter] (relating to Seal Specifications).

(e) Failure to comply with subsection (d) of this section is a violation of board rules and may [shall] be subject to sanctions.

(f) The printed registration certificate shall bear the signature of the chair and the secretary of the board, bear the seal of the board, and bear the full name and registration number of the registration holder.

(g) The printed registration certificate shall be uniform and of a design approved by the board. Any new designs for a printed registration certificate shall be made available to all registration holders upon request.

§134.101. Proposed Actions on Applications.

The following is a table of suggested actions the board may impose against applicants for specific circumstances related to an application. The action could be less than or greater than the suggested actions shown in the following table.
Figure: 22 TAC §134.101

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

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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 440-7723

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CHAPTER 140. CRIMINAL HISTORY AND CONVICTIONS

SUBCHAPTER A. CRIMINAL HISTORY AND CONVICTIONS

22 TAC §140.1, §140.3

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes a new chapter and new rules under 22 Texas Administrative Code Part 6. The Board proposes new Chapter 140, Subchapter A, regarding the evaluation of applications for professional engineers and professional land surveyors with criminal convictions, and proposes new rule §140.1, relating to Criminal History and Convictions for Engineers and new rule §140.3, relating to Criminal History and Convictions for Land Surveyors. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The proposed rules under 22 Texas Administrative Code, Chapter 140 implement Texas Occupations Code, Chapter 1001 and Chapter 1071, regarding processing of applications for engineers and land surveyors respectively. The proposed rules set out the framework that will be used for the evaluation of applications with a criminal history and conviction per Texas Occupations Code Chapter 53. The proposed rules replace current Board Rule §133.99, and instead of addressing engineering and land surveying in one rule, the Board has adopted a separate rule to address each profession.

SECTION-BY-SECTION SUMMARY

Proposed rule §140.1 sets out the framework that the board will use per Texas Occupations Code 53 when considering applications for engineering license from applicants with a conviction history.

Proposed rule §140.3 sets out the framework that the board will use per Texas Occupations Code 53 when considering applications for land surveyor registration or license from applicants with a conviction history.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of rules, processes, and procedures for application review and including an option for an applicant whose application is proposed to be denied due to criminal history issues to be reviewed by SOAH in alignment with Texas Occupations Code Chapter 53.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

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

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Additionally, the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not expand an existing regulation but does provide procedures and guidelines the board will follow that comply with Occupations Code Ch. 53.

7. The proposed rules do not increase the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY AND SECTIONS AFFECTED

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. These proposed rules implement Occupations Code §§53.001 to 53.153.

§140.1. Criminal History and Convictions - Engineers.

(a) Texas Occupations Code, Chapter 53 provides that the board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license if the person has been convicted of an offense listed under §53.021(a) or has a deferred adjudication that qualifies as a conviction under §53.021(d). Any such action shall be made after consideration of the factors listed in Texas Occupations Code, §53.022 and §53.023 and the guidelines issued by the board under §53.025.

(b) A person who is incarcerated because of a felony conviction is not eligible to obtain a license or renew a previously issued license under board rules or any statute governing a profession regulated by the board.

§140.3. Criminal History and Convictions - Surveyors.

(a) Texas Occupations Code, Chapter 53 provides that the board may suspend or revoke an existing license or registration, disqualify a person from receiving a license or registration, or deny a person the opportunity to be examined for a license or registration if

the person has been convicted of an offense listed under §53.021(a) or has a deferred adjudication that qualifies as a conviction under §53.021(d). Any such action shall be made after consideration of the factors listed in Texas Occupations Code, §53.022 and §53.023 and the guidelines issued by the board under §53.025.

(b) A person who is incarcerated because of a felony conviction is not eligible to obtain a license or registration or renew a previously issued license or registration under board rules or any statute governing a profession regulated by the board.

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

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 285. ON-SITE SEWAGE FACILITIES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§285.2, 285.3, 285.7, 285.32 - 285.34, 285.38, 285.64, and 285.91.

Background and Summary of the Factual Basis for the Proposed Rules

On November 12, 2020, the Texas On-Site Wastewater Association (TOWA) filed a petition for rulemaking. On April 5, 2021, B&J Wakefield Services, Inc. (Wakefield) filed a petition for rulemaking. On December 16, 2020, and May 19, 2021, respectively, the commission directed the executive director (ED) to initiate rulemaking after stakeholder involvement concerning the issues raised in the petitions. The petitions requested amendments to several sections, and the ED considered the changes recommended by TOWA and Wakefield. House Bill (HB) 1680 87th Legislature, 2021, allows leased portions of federal properties to be considered separately for the purposes of the implementation of 30 Texas Administrative Code (TAC) Chapter 285. HB 1680 does not require rulemaking; however, the ED has determined that implementing the bill language through rulemaking will clarify the requirements. This rulemaking would incorporate some, but not all, of the changes recommended by TOWA, none of the changes recommended by Wakefield, and the requirement regulating on-site sewage facilities (OSSFs) on certain leased land that is owned by the federal government. The proposed rules would update the definition of "direct communication" to ensure that, in addition to the installer and the installer's apprentice being able to communicate directly, the maintenance provider and the maintenance provider's technician would also be able to communicate directly. The updated definition would also allow any form of immediate communication rather than specifying "in person, by telephone, or by radio."

The proposed rules would clarify that: single family dwellings located on a tract of land that is ten acres or larger must adhere to all the requirements of Chapter 285 that are not specifically listed in the rule as exempt; all required tags must indicate the maintenance dates and maintenance provider information must be located outside the motor cover, control panel, or breaker box; "flows" are in reference to "hydraulic flows", and installers and owners can be parties in a contract with a maintenance provider.

The proposed rules would require risers to be installed over all inspection and cleanout ports, and all risers be at least two inches above grade. This requirement would be effective with permits issued on September 1, 2023, and later.

The proposed rules would update the language for timers used in dosing systems, and the requirement for purple fittings for reclaimed water systems.

The proposed rules would allow flexible conduit to be used in areas between the buried pipe and the control panels where rigid pipe is not feasible, with a limit of four feet of flexible conduit.

In addition to the above changes, the proposed rules would correct references and cross-references.

The proposed rules would implement HB 1680 by adding the requirement that if a tract of land owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land.

Section by Section Discussion

§285.2, Definitions

The proposal would amend the definition of "direct communication" in §285.2(18) to include communication between the installer and the apprentice, and the maintenance provider and the maintenance technician. The proposal removes the examples of means of communication to reflect that the modernization of communication provides for better, more efficient communication.

§285.3, General Requirements

The proposal would amend §285.3(f)(2) to clarify that the 10-acre exception only applies to the requirements for planning materials, permits, or inspections at an OSSF at a single-family dwelling and not allow exception from the planning, construction and installation standards as required by Chapter 285, Subchapter D. The current provision has been misinterpreted by homeowners, installers, authorized agents, and other stakeholders as meaning that single-family dwellings on 10 acres or more were exempt from the entirety of Chapter 285. This clarification would help authorized agents to better understand the regulatory requirements for large properties and correctly implement the rules, resulting in better protection of public health and the environment.

The proposal would also amend §285.3(f) to add paragraph (4) to incorporate the requirement from HB 1680 into the rule. The statute provides that "If a tract of land owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land for purposes of this chapter, or a rule adopted under this chapter."

§285.7, Maintenance Requirements

The proposal to amend §285.7(e)(2) would clarify that the required weather resistant tag must be located outside of the motor cover, control panel, or breaker box. The proposed language would improve safety for homeowners as it would require easy access to the maintenance provider's contact information.

The proposal to amend §285.7(c) will correct the reference from "§285.7(d)(1)(A) - (E)" to "subsection (d)(1)(A)- (F) of this section." This correction is necessary as the provision "(F)" requires the business physical address and telephone number for the maintenance provider, which is important for the maintenance contract.

§285.32, Criteria for Sewage Treatment Systems

The proposal to amend §285.32(b)(1)(D) would require tank risers to be at least two inches above grade. Currently the risers on some OSSFs are installed at or below grade, which makes maintenance of the OSSF difficult. This change would allow easier access to the OSSF for maintenance. Additionally, requiring risers to be installed two inches above grade will help prevent the OSSF from being infiltrated with rainwater during rain events. This requirement would be effective with permits issued on September 1, 2023, and later.

The proposal to amend §285.32(c)(5)(A) would remove the descriptor for the initials "NSF". The reference to National Sanitation Foundation (NSF) is outdated.

The proposal to amend §285.32(d)(5) corrects the reference to read "§285.34(c)".

§285.33, Criteria for Effluent Disposal Systems

The proposal to amend §285.33(c)(4) corrects the reference to "§285.32(c)(5)" rather than "§285.32(c)(4)(B)".

The proposal to amend §285.33(d)(2)(D) would remove the descriptor for the initials "NSF." The reference to National Sanitation Foundation (NSF) is outdated.

The proposal to amend §285.33(d)(2)(G)(i) would remove the requirement that a commercial irrigation timer be used. Other timers that are readily available provide the same functionality and level of service.

The proposal to amend §285.33(d)(2)(G)(iii)(I) would remove the requirement that a commercial irrigation timer be used. This is not a defined term and other commercially available products provide the needed functionality and level of service.

The proposal to amend §285.33(d)(2)(G)(iii)(II) would remove the requirement that a commercial irrigation timer be used. This is not a defined term and other commercially available products provide the needed functionality and level of service.

The proposal to amend §285.33(d)(2)(G)(v) would remove the requirement for fittings in distribution systems for reclaimed water systems from being permanently colored purple. The use of purple pipe is to clearly distinguish piping used for wastewater from other pipes, however, purple fittings are not readily available and are more expensive. The use of non-purple fittings will not affect an individual's ability to distinguish piping used for wastewater from piping used for other purposes since the pipe is still required to be purple.

§285.34, Other Requirements

The proposal to amend §285.34(a) would remove the descriptor for the initials "NSF." The reference to National Sanitation Foundation (NSF) is outdated.

The proposal to amend §285.34(b)(3) would clarify the type of flow by adding the word "hydraulic" to the provision. By adding the word "hydraulic", the rules will clearly identify the referenced flows as those within the OSSF system (wastewater generated onsite).

The proposal to amend §285.34(c) would allow up to four feet of electrical wiring that is not buried to be contained in water-tight flexible electric conduit, rather than in rigid pipe. Flexible conduit would provide sufficient safety measures to prevent infiltration or other exposures of the wiring to damage. The amended language is necessary to address wire protection in tight spaces, that are typically between the buried electrical wiring and the panel(s), that sometimes make configuring rigid conduit difficult. The amended provision will not require significant cost and design revisions.

§285.38, Prevention of Unauthorized Access to On-Site Sewage Facilities

(OSSFS)

The proposal to amend §285.38(c) would require all inspection and cleanout ports to have risers that extend to at least two inches above grade. This change eliminates the exception that the inspection and cleanout ports of septic tanks are not required to have risers. This change would allow easier access to the OSSF for maintenance and inspection. Additionally, requiring risers to be installed two inches above grade will help prevent the OSSF from being infiltrated with rainwater during rain events. This requirement would be effective with permits issued on September 1, 2023, and later.

The proposal to delete §285.38(d) is necessary to prevent ambiguity in the rules since §285.38(c) will no longer exempt septic tank inspection and cleanout ports from having risers.

The subsequent provisions were relabeled accordingly.

§285.64, Duties and Responsibilities of Maintenance Providers and Maintenance Technicians.

The proposal to amend §285.64(a)(5) would clarify that the maintenance provider is contracted to perform maintenance on an OSSF. The proposed change would remove the ambiguity in the rule that the installer is the only person that may contract with a maintenance provider to provide maintenance on an OSSF. After the end of the two-year period after installation, the homeowner is responsible for either contracting with a maintenance provider or obtaining the necessary training to maintain the OSSF system themselves.

§285.91 Tables.

The proposal to amend §285.91(2) Table 2 addresses the minimum aerobic tank treatment capacity for one and two bedroom homes with less than 1501 square feet. This correction adds these homes to the table and resolves the questions that arise as a result of the smaller homes not being addressed.

The proposal to amend §285.91(10) Table 10 corrects the reference to read "§76.1000(a)(1)" rather than "§76.100(a)(1)." This correction is necessary as the current reference is incorrect.

The proposal to amend §285.91(10) Table 10 updates the reference from the Ra value "less than" to read the Ra value "equal to" 0.1. This correction is necessary as the current reference is incorrect. As indicated in §285.91 (1) Table 1, no reference to an Ra value less than 0.1 is given; rather, an Ra value of equal to 0.1 is given.

The proposal to amend §285.91 (Table 10) (Footnote 6) updates the language for timers to remove the reference to "commercial irrigation" timers to align with the updated language that is proposed in §285.33(d)(2)(G)(i). This change would remove ambiguity in the amended rules that the language "commercial irrigation" produces from the provision for timers.

Fiscal Note: Costs to State and Local Government

Jené Bearse, deputy director of 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 rule.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved environmental impacts resulting from the decreased potential for infiltration that could result from risers that are below ground level. Another benefit will be clear regulations, consistency with industry terminology and standards, and compliance with recent changes to state law.

The proposed rulemaking may have a fiscal implication for a business or individual if they own or operate a new or altered on-site sewage facility that is required to install a riser over all inspection and cleanout ports. Depending on several variables, the cost for a riser is estimated to be between $100 and $400. For the purpose of this fiscal note, it is assumed that owners and operators of facilities are correctly implementing the existing regulations that are in effect prior to this proposed rulemaking.

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 rule is in effect.

Rural Community Impact Statement

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 rule 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 rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does amend an existing regulation, but it does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule 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 analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to update the rules in 30 TAC 285 to make them current with industry standards and practices.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not 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. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of OSSFs; 2) does not exceed any express requirements of state law related to the regulation of OSSFs; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental

rule," this rulemaking is not subject to Texas Government Code, §2001.0225.

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 this rulemaking and performed an analysis of whether the proposed rules would constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) 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 Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if 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 determined that the proposed rules would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the proposed rules would not affect any landowner's rights in private real property, and there are no burdens that would be imposed on private real property by the proposed rules.

Consistency with the Coastal Management Program

The ED 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 ED conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The applicable goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. The specific CMP policies applicable to these proposed amendments include clarifications in OSSF rules, updated language to be consistent with industry standards, require technical changes to provide easier access for maintenance of OSSFs, and implement House Bill 1680 which would allow separately leased individual parts of federal lands to be considered as separate tracts for the purposes of Chapter 285. In addition to these changes, several typographical errors and incorrect references within Chapter 285 would be corrected. Promulgation and enforcement of these proposed rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these proposed rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules do not relax current treatment or disposal standards.

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.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on January 30, 2023, 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.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, January 26, 2023. 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 Friday, January 27, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTY1YzE1NTMtN2UzZC00ZDVmLWEwMWQtYTBjYTBkMjQ0ZTJk%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 Cecilia Mena, 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://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2021-030-285-CE. The comment period closes on January 31, 2023. 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 Donna Cosper, Program Support Section, at (512) 239-1324 or *donna.cosper@tceq.texas.gov.*

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§285.2, 285.3, 285.7

Statutory Authority

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over onsite sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the proposal.

This rulemaking implements House Bill 1680, 87th Leg. (2021), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts are considered a separate tract of land for purposes of on-site sewage facilities permitting.

§285.2. Definitions.

The following words and terms in this section are in addition to the definitions in Chapter 3 and Chapter 30 of this title (relating to Definitions and Occupational Licenses and Registrations). The words and terms in this section, when used in this chapter, have the following meanings.

(1) Aerobic digestion--The bacterial decomposition and stabilization of sewage in the presence of free oxygen.

(2) Alter--To change an on-site sewage facility resulting in:

(A) an increase in the volume of permitted flow;

(B) a change in the nature of permitted influent;

(C) a change from the planning materials approved by the permitting authority;

(D) a change in construction; or

(E) an increase, lengthening, or expansion of the treatment or disposal system.

(3) Anaerobic digestion--The bacterial decomposition and stabilization of sewage in the absence of free oxygen.

(4) Apprentice--An individual who has been properly registered with the executive director according to Chapter 30 of this title (relating to Occupational Licenses and Registrations), and is undertaking a training program under the direct supervision of a licensed installer.

(5) Authorization to construct--Written permission from the permitting authority to construct an on-site sewage facility showing the date the permission was granted. The authorization to construct is the first part of the permit.

(6) Authorized agent--A local governmental entity that has been delegated the authority by the executive director to implement and enforce the rules adopted under Texas Health and Safety Code, Chapter 366.

(7) Borehole--A drilled hole four feet or greater in depth and one to three feet in diameter.

(8) Certified professional soil scientist--An individual who has met the certification requirements of the American Society of Agronomy to engage in the practice of soil science.

(9) Cesspool--A non-watertight, covered receptacle intended for the receipt and partial treatment of sewage. This device is constructed such that its sidewalls and bottom are open-jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition.

(10) Cluster system--A sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units on separate legal tracts where the total combined flow from all units does not exceed 5,000 gallons per day.

(11) Commercial or institutional facility--Any building that is not used as a single-family dwelling or duplex.

(12) Compensation--A payment to construct, alter, repair, extend, maintain, or install an on-site sewage facility. Payment may be in the form of cash, check, charge, or other form of monetary exchange or exchange of property or services for service rendered.

(13) Composting toilet--A self-contained treatment and disposal facility constructed to decompose non-waterborne human wastes through bacterial action.

(14) Condensate drain--A pipe that is used for the disposal of water generated by air conditioners, refrigeration equipment, or other equipment.

(15) Construct--To engage in any activity related to the installation, alteration, extension, or repair of an on-site sewage facility (OSSF), including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.

(16) Delegate--The executive director's act of assigning authority to implement the on-site sewage facility program under this chapter.

(17) Designated representative--An individual who holds a valid license issued by the executive director according to Chapter 30 of this title (relating to Occupational Licenses and Registrations), and who is designated by the authorized agent to review permit applications, site evaluations, or planning materials, or conduct inspections on on-site sewage facilities.

(18) Direct communication--The demonstrated ability of an installer and the apprentice to immediately communicate with each other, and the maintenance provider and the maintenance technician to immediately communicate with each other [~~to communicate immediately with each other in person, by telephone, or by radio~~].

(19) Direct supervision--The responsibility of an installer to oversee, direct, and approve all actions of an apprentice relating to the construction of an on-site sewage facility, or the responsibility of a maintenance provider to oversee, direct, and approve all actions of a maintenance technician relating to the maintenance of an on-site sewage facility.

(20) Discharge--To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) Edwards Aquifer--That portion of an arcuate belt of porous, waterbearing predominantly carbonate rocks (limestones) known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Group, and Georgetown Formation, or as amended under Chapter 213 of this title (relating to Edwards Aquifer). The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche

Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) Edwards Aquifer Recharge Zone--That area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as a geographic area delineated on official maps located in the agency's central office and in the appropriate regional office, or as amended by Chapter 213 of this title (relating to Edwards Aquifer).

(23) Extend--To alter an on-site sewage facility resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.

(24) Floodplain (100-year)--Any area susceptible to inundation by flood waters from any source and subject to the statistical 100-year flood (has a 1% chance of flooding each year).

(25) Floodway--The channel of a watercourse and the adjacent land areas (within a portion of the 100-year floodplain) that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation before encroachment into the 100-year floodplain.

(26) Geotextile filter fabric--A non-woven fabric suitable for wastewater applications.

(27) Gravel-less drainfield pipe--An eight-inch or ten-inch diameter geotextile fabric-wrapped piping product without gravel or media.

(28) Grease interceptor--Floatation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged.

(29) Groundwater--Subsurface water occurring in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(30) Holding tank--A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to an approved treatment process.

(31) Individual--A single living human being.

(32) Install--To put in place or construct any portion of an on-site sewage facility.

(33) Installer--An individual who is compensated by another to construct an on-site sewage facility.

(34) Local governmental entity--A municipality, county, river authority, or special district, including groundwater conservation districts, soil and water conservation districts, and public health districts.

(35) Maintenance--Required or routine performance checks, examinations, upkeep, cleaning, or mechanical adjustments to an on-site sewage facility, including replacement of pumps, filters, aerator lines, valves, or electrical components. Maintenance does not include alterations.

(36) Maintenance findings--The results of a required performance check or component examination on a specific on-site sewage facility.

(37) Maintenance provider--An individual who maintains on-site sewage facilities for compensation. Through August 31, 2009, a maintenance company is a person or business that maintains on-site sewage facilities for compensation.

(38) Maintenance technician--An individual who holds a valid registration issued by the executive director to maintain on-site sewage facilities and works under a maintenance provider.

(39) Malfunctioning OSSF--An on-site sewage facility that is causing a nuisance or is not operating in compliance with this chapter.

(40) Manufactured housing community--Any area developed or used for lease or rental of space for two or more manufactured homes.

(41) Multi-unit residential development--Any area developed or used for a structure or combination of structures designed to lease or rent space to house two or more families.

(42) Notice of approval--Written permission from the permitting authority to operate an on-site sewage facility. The notice of approval is the final part of the permit.

(43) Nuisance--

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons;

(B) an overflow from a septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage facility; or

(C) a blatant discharge from an OSSF.

(44) On-site sewage disposal system--One or more systems that:

(A) do not treat or dispose of more than 5,000 gallons of sewage each day; and

(B) are used only for disposal of sewage produced on a site where any part of the system is located.

(45) On-site sewage facility (OSSF)--An on-site sewage disposal system.

(46) On-site waste disposal order--An order, ordinance, or resolution adopted by a local governmental entity and approved by the executive director.

(47) Operate--To use an on-site sewage facility.

(48) Owner--A person who owns property served by an on-site sewage facility (OSSF), or a person who owns an OSSF. This includes any person who holds legal possession or ownership of a total or partial interest in the structure or property served by an OSSF.

(49) Owner's agent--An installer, professional sanitarian, or professional engineer who is authorized to submit the permit application and the planning materials to the permitting authority on behalf of the owner.

(50) Permit--An authorization, issued by the permitting authority, to construct or operate an on-site sewage facility. The permit consists of the authorization to construct (including the approved planning materials) and the notice of approval.

(51) Permitting authority--The executive director or an authorized agent.

(52) Planning material--Plans, applications, site evaluations, and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit.

(53) Platted--The subdivision of property which has been recorded with a county or municipality in an official plat record.

(54) Pretreatment tank--A tank placed ahead of a treatment unit that functions as an interceptor for materials such as plastics, clothing, hair, and grease that are potentially harmful to treatment unit components.

(55) Professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(56) Professional sanitarian--An individual registered by the Texas Department of State Health Services to carry out educational and inspection duties in the field of sanitation in the State of Texas.

(57) Proprietary system--An on-site sewage facility treatment or disposal system that is produced or marketed under exclusive legal right of the manufacturer or designer or for which a patent, trade name, trademark, or copyright is used by a person or company.

(58) Recharge feature--Permeable geologic or manmade feature located on the Edwards Aquifer Recharge Zone where:

(A) a potential for hydraulic interconnectedness between the surface and the aquifer exists; and

(B) rapid infiltration from the on-site sewage facility to the subsurface may occur.

(59) Recreational vehicle park--A single tract of land that has rental spaces for two or more vehicles that are intended for recreational use only and has a combined wastewater flow of less than 5,000 gallons per day.

(60) Regional office--A regional office of the agency.

(61) Repair--To replace any components of an on-site sewage facility (OSSF) in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.

(62) Scum--A mass of organic or inorganic matter which floats on the surface of sewage.

(63) Secondary treatment--The process of reducing pollutants to the levels specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

(64) Seepage pit--An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

(65) Septic tank--A watertight covered receptacle constructed to receive, store, and treat sewage by: separating solids from the liquid; digesting organic matter under anaerobic conditions; storing the digested solids through a period of detention; and allowing the clarified liquid to be disposed of by a method approved under this chapter.

(66) Sewage--Waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

(67) Single family dwelling--A structure that is either built on or brought to a site, for use as a residence for one family. A single family dwelling includes all detached buildings located on the residential property and routinely used only by members of the household of the single family dwelling.

(68) Site evaluator--An individual who holds a valid license issued by the executive director according to Chapter 30 of this title (relating to Occupational Licenses and Registrations) and who conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an on-site sewage facility. A professional engineer may perform site evaluations without obtaining a site evaluator license.

(69) Sludge--A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(70) Soil--The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(71) Soil absorption system--A subsurface method for the treatment and disposal of sewage which relies on the soil's ability to treat and absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(72) Subdivision--A division of a tract of land, regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

(73) Testing and reporting--Routine inspection, sampling and performance checks performed by the maintenance provider or maintenance technician and the submittal of findings to the OSSF owner and the permitting authority. Testing and reporting does not include repair or replacement of parts.

(74) Well--A water well, injection well, dewatering well, monitoring well, piezometer well, observation well, or recovery well as defined under Texas Water Code, Chapters 26, 32, and 33, and 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

§285.3. General Requirements.

(a) Permit required. A person shall hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage facility (OSSF) unless the OSSF meets one of the exceptions in subsection (f) of this section.

(1) All aspects of the permitting, planning, construction, operation, and maintenance of OSSFs shall be conducted according to this chapter, or according to an order, ordinance, or resolution of an authorized agent.

(2) The executive director is the permitting authority unless a local governmental entity has an OSSF order, ordinance, or resolution approved by the executive director. In areas where the executive director is the permitting authority, the staff from the appropriate regional office shall be responsible for the proper implementation of this chapter.

(3) Permits shall be transferred to a new owner automatically upon sale or other legal transfer of an OSSF.

(4) Conditioning of Permits. The permitting authority may require conditions to a permit in order to ensure that the permitted OSSF system will operate in accordance with the planning materials and system approval. Failure to comply with these conditions is a violation of the permit and this chapter. Any violation of a condition of a permit that would be considered an alteration as defined in §285.2(2) of this title (relating to Definitions) would require a new permit.

(b) General Application Requirements.

(1) The owner or owner's agent must obtain an authorization to construct from the permitting authority before construction may begin on an OSSF. Before an authorization to construct can be issued, the permitting authority shall require submittal of the following from the owner or owner's agent:

(A) an application, on the form provided by the permitting authority;

(B) all planning materials, according to §285.5 of this title (relating to Submittal Requirements for Planning Materials);

(C) the results of a site evaluation, conducted according to §285.30 of this title (relating to Site Evaluation); and

(D) the appropriate fee.

(2) Variance requests shall be submitted with the application and shall be reviewed by the permitting authority according to subsection (h) of this section.

(3) Before the permitting authority issues an authorization to construct, the owner of OSSFs identified in §285.91(12) of this title (relating to Tables) or the owner's agent, must record an affidavit in the county deed records of the county or counties where the OSSF is located. Additionally, the owner or the owner's agent must submit, to the permitting authority, an affidavit affirming the recording. An example of the affidavit is located in §285.90(2) of this title (relating to Figures). The affidavit must include:

(A) the owner's full name;

(B) the legal description of the property;

(C) that an OSSF requiring continuous maintenance is located on the property;

(D) that the permit for the OSSF is transferred to the new owner upon transfer of the property; and

(E) that at any time after the initial two-year service policy, the owner of an aerobic treatment system for a single family residence shall either obtain a maintenance contract within 30 days of the transfer or maintain the system personally.

(c) Action on Applications. The permitting authority shall either approve or deny an application within 30 days of receiving an application. If the application and planning materials are approved, the permitting authority shall issue an authorization to construct. If the application and planning materials are denied, the permitting authority shall explain the reasons for the denial in writing to the owner, and the owner's agent.

(d) Construction and Inspection.

(1) An authorization to construct is valid for one calendar year from the date of its issuance. If the installer does not request a construction inspection by the permitting authority within one year of the issuance of the authorization to construct, the authorization to construct expires, and the owner will be required to submit a new application and application fee before an OSSF can be installed. A new application and application fee are not required if the owner decides not to install an OSSF.

(2) The installer shall notify the permitting authority at least five working days (Monday through Friday, excluding holidays) before the date the OSSF will be ready for inspection.

(3) The permitting authority shall conduct a construction inspection.

(4) If the OSSF does not pass the construction inspection, the permitting authority shall:

(A) at the close of the inspection, advise the owner and the owner's agent, if present, of the deficiencies identified and that the OSSF cannot be used until it passes inspection; and

(B) within seven calendar days after the inspection, issue a letter to the owner and the owner's agent listing the deficiencies identified and stating that the OSSF cannot be used until it passes inspection.

(5) If a reinspection is necessary, a reinspection fee may be assessed by the permitting authority.

(6) The reinspection fee must be paid before the reinspection is conducted.

(e) Notice of Approval.

(1) Within seven calendar days after the OSSF has passed the construction inspection, the permitting authority shall issue, to the owner or owner's agent, a written notice of approval for the OSSF.

(2) The notice of approval shall have a unique identification number, and shall be issued in the name of the owner.

(f) Exceptions.

(1) An owner of an OSSF will not be required to comply with the permitting, operation, and installation requirements of this chapter if the OSSF is not creating a nuisance and:

(A) the OSSF was installed before September 1, 1989, provided the system has not been altered, and is not in need of repair;

(B) the OSSF was installed before the effective date of the order, ordinance, or resolution in areas where the local governmental entity had an approved order, ordinance, or resolution dated before September 1, 1989, provided the system has not been altered and is not in need of repair; or

(C) the owner received authorization to construct from a permitting authority before the effective date of this chapter.

(2) No planning materials, permit, and inspections [~~or inspection~~] are required for an OSSF for a single family dwelling located on a tract of land that is ten acres or larger provided the OSSF complies with all other requirements of Chapter 285, Subchapter D: Planning, Construction, and Installation Standards for OSSFs, and:

(A) the OSSF is not causing a nuisance or polluting groundwater;

(B) all parts of the OSSF are at least 100 feet from the property line;

(C) the effluent is disposed of on the property; and

(D) the single family dwelling is the only dwelling located on that tract of land.

(3) Connecting recreational vehicles or manufactured homes to rental spaces is not considered construction if the existing OSSF system is not altered.

(4) If a tract of land that is owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land for the purposes of 30 TAC Chapter 285.

(g) Exclusions. The following systems are not authorized by this subchapter and may require a permit under Chapter 205 or Chapter 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively):

(1) one or more systems that cumulatively treat and dispose of more than 5,000 gallons of sewage per day on one piece of property;

(2) any system that accepts waste that is either municipal, agricultural, industrial, or other waste as defined in Texas Water Code, Chapter 26;

(3) any system that will discharge into or adjacent to waters in the state; or

(4) any new cluster systems.

(h) Variances. Requests for variances from provisions of this chapter may be considered by the appropriate permitting authority on a case-by-case basis.

(1) A variance may be granted if the owner, or a professional sanitarian or professional engineer representing the owner, demonstrates to the satisfaction of the permitting authority that conditions are such that equivalent or greater protection of the public health and the environment can be provided by alternate means. Variances for separation distances shall not be granted unless the provisions of this chapter cannot be met.

(2) Any request for a variance under this subsection must contain planning materials prepared by either a professional sanitarian or a professional engineer (with appropriate seal, date, and signature).

(i) Unauthorized systems. Boreholes, cesspools, and seepage pits are prohibited for installation or use. Boreholes, cesspools, and seepage pits that treat or dispose of less than 5,000 gallons of sewage per day shall be closed according to §285.36 of this title (relating to Abandoned Tanks, Boreholes, Cesspools, and Seepage Pits). Boreholes, cesspools, and seepage pits that exceed 5,000 gallons of sewage per day must be closed as a Class V injection well under Chapter 331 of this title (relating to Underground Injection Control).

§285.7. Maintenance Requirements.

(a) Maintenance contract requirements. Maintenance contract requirements for all on-site sewage facilities (OSSFs) are identified in §285.91(12) of this title (relating to Tables). The permit holder shall ensure that the OSSF is properly operated and maintained in accordance with this chapter. Homeowners who maintain their own systems are exempt from contract requirements, as provided in subsection (d)(4) of this section.

(b) Maintenance provider.

(1) Effective September 1, 2009, in order to perform maintenance on an OSSF, an individual must either be licensed by the TCEQ as a maintenance provider or registered by the TCEQ as a maintenance technician and employed by a licensed maintenance provider. Prior to September 1, 2009, in order to perform maintenance on an OSSF, an individual must be registered by the TCEQ as a maintenance provider.

(2) Effective September 1, 2009, the maintenance provider will be responsible for fulfilling the requirements of the maintenance contract. The maintenance provider will be responsible for the work performed by registered maintenance technicians under their direct supervision. Prior to September 1, 2009, the maintenance company will be responsible for fulfilling the requirements of the maintenance contract.

(3) Effective September 1, 2009, the maintenance provider must sign all maintenance reports.

(c) Initial Two-Year Service Policy. The initial two-year service policy shall be effective for two years from the date the OSSF is first used. For a new single family dwelling, this date is the date of sale by the builder. For an existing single family dwelling this date is the date the notice of approval is issued by the permitting authority. The owner, or owner's agent shall provide the permitting authority with a copy of the signed initial two-year service policy before the system is approved for use. The initial service policy shall meet the minimum guidelines for maintenance contracts, as described in subsection (d)(1)(A) - (F) of this section [~~§285.7(d)(1)(A) - (E)~~] and the individual fulfilling the service policy shall be a maintenance provider or a maintenance technician working under the supervision of a maintenance provider.

(d) Maintenance contracts. OSSFs required to have maintenance contracts are identified in §285.91(12) of this title.

(1) Contract provisions. The OSSF maintenance contract shall, at a minimum:

(A) list items that are covered by the contract;

(B) specify a time frame in which the maintenance provider or maintenance technician will visit the property in response to a complaint by the property owner regarding the operation of the system;

(C) specify the name of the maintenance provider who is responsible for fulfilling the terms of the maintenance contract;

(D) identify the frequency of routine maintenance and the frequency of the required testing and reporting;

(E) identify who is responsible for maintaining the disinfection unit; and

(F) indicate the business physical address and telephone number for the maintenance provider.

(2) Contract submittals. Unless the owner maintains the system, as excepted by paragraph (4) of this subsection, a copy of the signed maintenance contract shall be provided by the owner to the permitting authority 30 days before the expiration of the initial two-year service policy. For the time period after the initial two-year service policy, the owner is required to have a new maintenance contract signed and submitted to the permitting authority at least 30 days before the contract expires unless the owner maintains the system, as excepted by paragraph (4) of this subsection.

(3) Amendments or terminations.

(A) Effective September 1, 2009, if the maintenance provider discontinues the maintenance contract, the maintenance provider shall notify, in writing, the permitting authority, the manufacturer, and the owner at least 30 days before the date service will cease. Prior to September 1, 2009, if the maintenance company discontinues the maintenance contract, the maintenance company shall notify, in writing, the permitting authority, the manufacturer, and the owner at least 30 days before the date service will cease.

(B) Effective September 1, 2009, if the owner discontinues the maintenance contract, the maintenance provider shall notify, in writing, the permitting authority and the manufacturer at least 30 days before the date service will cease. Prior to September 1, 2009, if the owner discontinues the maintenance contract, the maintenance company shall notify, in writing, the permitting authority and the manufacturer at least 30 days before the date service will cease.

(C) Effective September 1, 2009, if a maintenance contract is discontinued or terminated, the owner shall contract with another maintenance provider and provide the permitting authority with a copy of the new signed maintenance contract no later than 30 days after termination, unless the owner meets the requirements of paragraph (4) of this subsection. Prior to September 1, 2009, if a maintenance contract is discontinued or terminated, the owner shall contract with another maintenance company and provide the permitting authority with

a copy of the new signed maintenance contract no later than 30 days after termination, unless the owner meets the requirements of paragraph (4) of this subsection.

(4) Exceptions to maintenance contract. At the end of the initial two-year service policy, the owner of an OSSF for a single family residence shall either maintain the system personally or obtain a new maintenance contract.

(A) If the residence is sold before the end of the initial two-year service policy period, the terms of the initial service policy will apply to the new owner.

(B) An owner may not maintain an OSSF under the provisions of this section for commercial, speculative residential, or multifamily property.

(e) Testing and reporting. OSSFs that must be tested are identified in §285.91(12) of this title.

(1) Effective September 1, 2009, the maintenance provider shall test and report for each system as required in §285.91(12) of this title. Prior to September 1, 2009, the maintenance company shall test and report for each system as required in §285.91(12) of this title. The report must:

(A) include any responses to owner complaints; the results of the maintenance provider's findings as described in §285.90(3) of this title (relating to Figures) and the test results as required in §285.91(4) of this title, including procedures for the maintenance of the unit approved by the executive director; and

(B) be submitted to the permitting authority and the owner within 14 days after the date the test is performed.

(2) To provide the owner with a record of the maintenance check, the maintenance provider shall install a weather resistant tag, or some other form of weather resistant identification, on the system at the beginning of each maintenance contract. The weather resistant tag or other form of weather resistant identification must be located on the outside of the motor cover, control panel, or breaker box. This identification shall:

(A) identify the maintenance provider;

(B) list the telephone number of the maintenance provider;

(C) specify the start date of the contract; and

(D) be either punched or indelibly marked with the date the system was checked at the time of each maintenance check, including any maintenance check in response to owner complaints.

(3) The number of required tests may be reduced to two per year for all systems having electronic monitoring and automatic telephone or radio access that will notify the maintenance provider of system or components failure and will monitor the amount of disinfection in the system. The maintenance provider shall be responsible for ensuring that the electronic monitoring and automatic telephone or radio access systems are working properly.

(4) The owner of an OSSF for a single family residence who elects to maintain their unit through the exemption described in subsection (d)(4) of this section is not subject to testing and reporting requirements.

(f) Replacement parts. The manufacturer of the installed on-site aerobic system shall make available to the homeowner all replacement parts for that aerobic system to any homeowner who elects to maintain the on-site aerobic system as identified in subsection (d)(4) of this section. The manufacturer shall also make replacement parts available to installers and maintenance providers. Failure to do so may result in removal of the manufacturer's product(s) from the list of approved systems.

(g) Inspections by authorized agents or commission. An authorized agent or the commission may inspect an on-site sewage system using aerobic treatment at any time.

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

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Texas Commission on Environmental Quality
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SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

30 TAC §§285.32 - 285.34, 285.38

Statutory Authority

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over onsite sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the proposal.

This rulemaking implements House Bill 1680 (87th legislative session), codified as Texas Health and Safety Code §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

§285.32. Criteria for Sewage Treatment Systems.

(a) Pipe from building to treatment system.

(1) The pipe from the sewer stub out to the treatment system shall be constructed of cast iron, ductile iron, polyvinyl chloride (PVC) Schedule 40, standard dimension ratio (SDR) 26 or other material approved by the executive director.

(2) The pipe shall be watertight.

(3) The slope of the pipe shall be no less than 1/8 inch fall per foot of pipe.

(4) The sewer stub out should be as shallow as possible to facilitate gravity flow.

(5) A two-way cleanout plug must be provided between the sewer stub out and the treatment tank. Only sanitary type fittings constructed of PVC Schedule 40 or SDR 26 shall be used on this section

of the sewer. An additional cleanout plug shall be provided every 100 feet on long runs of pipe and within five feet of 90 degree bends.

(6) Additional cleanout plugs shall be of the single sanitary type.

(7) The pipe shall have a minimum inside diameter of three inches.

(8) Pipe that crosses drainage easements shall be sleeved with American Society for Testing and Materials (ASTM) Schedule 40 pipe; the pipes shall be buried at least one foot below the surface, or buried less than one foot and encased in concrete; the outside pipe shall have locater tape attached to the pipe; and markers shall be placed at the easement boundaries to indicate the location of the pipe crossing. Crossings shall be designed and constructed in a manner that protects the pipe and the drainage way from erosion.

(b) Standard treatment systems.

(1) Septic tanks. A septic tank shall meet the following requirements.

(A) Tank volume. The liquid volume of a septic tank, measured from the bottom of the outlet, shall not be less than established in §285.91(2) of this title (relating to Tables). Additionally, the liquid depth of the tank shall not be less than 30 inches.

(B) Inlet and outlet devices. The flowline of the tank's inlet device in the first compartment of a two-compartment tank, or in the first tank in a series of tanks, shall be at least three inches higher than the flowline of the outlet device. For a configuration of the tank and inlet and outlet devices, see §285.90(6) and (7) of this title (relating to Figures). The inlet devices shall be "T" branch fittings, constructed baffles or other structures or fittings approved by the executive director. The outlet devices shall use a "T" unless an executive director approved fitting is installed on the outlet. All inlet and outlet devices shall be installed water tight to the septic tank walls and shall be a minimum of three inches in diameter.

(C) Baffles and series tanks. All septic tanks shall be divided into two or three compartments by the use of baffles or by connecting two or more tanks in a series.

(i) Baffled tanks. In a baffled tank, the baffle shall be located so that one half to two thirds of the total tank volume is located in the first compartment. Baffles shall be constructed the full width and height of the tank with a gap between the top of the baffle and the tank top. The baffle shall have an opening located below the liquid level of the tank at a depth between 25% and 50% of the liquid level. The opening may be a slot or hole. If a "T" is fitted to the slot or hole, the inlet to the fitting shall be at the depth stated in this paragraph. See §285.90(6) of this title for details. Any metal structures, fittings, or fastenings shall be stainless steel.

(ii) Series tanks. Two or more tanks shall be arranged in a series to attain the required liquid volume. The first tank in a two-tank system shall contain at least one half to two thirds the required volume. The first tank in a three-tank system shall contain at least one-third of the total required volume, but no less than 500 gallons. The first tank in a four or more tank system shall contain no less than 500 gallons, and the last tank in a four or more tank system shall contain no more than one third of the total required volume. Interconnecting inlet and outlet devices may be installed at the same elevation for multiple tank installations.

(D) Inspection or cleanout ports. All septic tanks shall have inspection or cleanout ports located on the tank top over the inlet and outlet devices. Each inspection or cleanout port shall be offset to allow for pumping of the tank. The ports may be configured in any manner as long as the smallest dimension of the opening is at least 12 inches, and is large enough to provide for maintenance and for equipment removal. Septic tanks buried more than 12 inches below the ground surface shall have risers over the port openings. For all OSSF's permitted on or after September 1, 2023, the [~~The~~] risers shall extend from the tank surface to a minimum of two inches above grade [~~no more than six inches below the ground~~]. The risers shall be sealed to the tank. The risers shall have inside diameters which are equal to or larger than the inspection or cleanout ports. The risers shall be fitted with removable watertight caps and prevent unauthorized access.

(E) Septic tank design and construction materials. The septic tank shall be of sturdy, water-tight construction. The tank shall be designed and constructed so that all joints, seams, component parts, and fittings prevent groundwater from entering the tank, and prevent wastewater from exiting the tank, except through designed inlet and outlet openings. Materials used shall be steel-reinforced poured-in-place concrete, steel-reinforced precast concrete, fiberglass, reinforced plastic polyethylene, or other materials approved by the executive director. Metal septic tanks are prohibited. The septic tank shall be structurally designed to resist buckling from internal hydraulic loading and exterior loading caused by earth fill and additional surface loads. Tanks exhibiting deflections, leaks, or structural defects shall not be used. Sweating at construction joints is acceptable on concrete tanks.

(i) Precast concrete tanks. In addition to the general requirements in this subparagraph, precast concrete tanks shall conform to requirements in the Materials and Manufacture Section and the Structural Design Requirements Section of ASTM Designation: C 1227, Standard Specification for Precast Concrete Septic Tanks (2000) or under any other standards approved by the executive director. A professional engineer shall verify in writing that the manufacturer is in compliance with ASTM Standard C 1227. This verification shall be submitted to the permitting authority from the tank manufacturer. If this verification has not been previously submitted or accepted by the permitting authority, a new verification shall be completed within 30 days of the effective date of this section.

(ii) Fiberglass and plastic polyethylene tank specifications.

(I) The tank shall be fabricated to perform its intended function when installed. The tank shall not be adversely affected by normal vibration, shock, climate conditions, nor typical household chemicals. The tank shall be free of rough or sharp edges that would interfere with installation or service of the tank.

(II) Full or empty tanks shall not collapse or rupture when subjected to earth and hydrostatic pressures.

(iii) Poured-in-place concrete tanks. Concrete tanks shall be structurally sound and water-tight. The concrete tank shall be designed by a professional engineer.

(iv) Tank manufacturer specifications. All precast or prefabricated tanks shall be clearly and permanently marked, tagged, or stamped with the manufacturer's name, address, and tank capacity. The identification shall be near the level of the outlet and be clearly visible. Additionally, the direction of flow into and out of the tank shall be indicated by arrows or other identification, and shall be clearly marked at the inlet and outlet.

(F) Installation of tanks. For gravity disposal systems, septic tanks must be installed with at least a 12 inch drop in elevation from the bottom of the outlet pipe to the bottom of the disposal area. A minimum of four inches of sand, sandy loam, clay loam, or pea gravel, free of rock larger than 1/2 inch in diameter, shall be placed under and around all tanks, except poured-in-place concrete tanks. Unless

otherwise approved by the permitting authority, tank excavations shall be left open until they have been inspected by the permitting authority. Tank excavations must be backfilled with soil or pea gravel that is free of rock larger than 1/2 inch in diameter. Class IV soils and gravel larger than one-half inch in diameter are not acceptable for use as backfill material. If the top of a septic tank extends above the ground surface, soil may be mounded over the tank to maintain slope to the drainfield.

(G) Pretreatment (Trash) tanks. If an aerobic treatment unit does not prevent plastic and other non-digestible sewage from interfering with aeration lines and diffusers, the executive director may require the use of a pretreatment tank. All pretreatment tanks shall meet all applicable structural and fitting requirements of this section.

(H) Leak Testing. At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the tank riser(s) may be required.

(2) Intermittent sand filters. A typical layout and cross-section of an intermittent sand filter is presented in §285.90(8) of this title. Requirements for intermittent sand filters are as follows.

(A) Sand media specifications. Sand filter media must meet ASTM C-33 specifications as outlined in §285.91(11) of this title.

(B) Loading rate. The loading rate shall not exceed 1.2 gallons per day per square foot.

(C) Surface area. The minimum surface area shall be calculated using the formula: Q/1.2=Surface Area (Square Feet), where Q is the wastewater flow in gallons per day.

(D) Thickness of sand media. There shall be a minimum of 24 inches of sand media.

(E) Filter bed containment. The filter bed containment shall be an impervious lined pit or tank. Liners shall meet the specifications detailed in §285.33(b)(2)(A) of this title (relating to Criteria for Effluent Disposal Systems).

(F) Underdrains. For gravity discharge of effluent to a drainfield, there shall be a three inch layer of pea gravel over a six inch layer of 0.75 inch gravel, that contains the underdrain collection pipe. When pumpwells are to be used to pump the effluent from the underdrain to the drainfield, they must be constructed of concrete or plastic sewer pipe. The pumpwell must contain a sufficient number of holes so that effluent can flow from the gravel void space as rapidly as the effluent is pumped out of the pumpwell to the drainfield. Refer to §285.90(9) of this title.

(c) Proprietary treatment systems. This subsection does not apply to proprietary septic tanks described in subsection (b)(1) of this section.

(1) Tank sizing. Proprietary treatment systems that serve single family residences, combined flows from single family residences, or multi-unit residential developments shall be designed using Table II in §285.91(2) of this title unless there is an equalization tank preceding the aerobic treatment unit. If there is an equalization tank preceding the aerobic treatment unit, the equalization tank shall meet the requirements set forth in §285.34(b)(4) of this title (relating to Other Requirements) and the aerobic treatment units can be sized using the wastewater flows in Table III in §285.91(3) of this title. Proprietary Treatment systems for non-residential facilities shall be sized using the wastewater flows in Table III in §285.91(3) of this title. Leak testing shall be performed in accordance with subsection (b)(1)(H) of this section.

(2) Installation. Proprietary treatment systems shall be installed according to this subchapter. If the manufacturer has installation specifications that are more stringent than given in this subchapter, the manufacturer shall submit these specifications to the executive director for review. If approved by the executive director, the treatment systems may be installed according to these more stringent specifications. Any subsequent changes to these manufacturer's installation specifications must be approved by the executive director before installation. Inspection, cleanout ports, or maintenance ports shall have risers installed according to the riser installation provisions in subsection (b)(1)(D) of this section. Tank excavations shall be backfilled according to the backfill provisions in subsection (b)(1)(F) of this section. At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the riser(s) may be required.

(3) System maintenance. Ongoing maintenance contracts are required for all proprietary treatment systems except those systems maintained by homeowners under the provisions of §285.7(d)(4) of this title (relating to Maintenance Requirements). The maintenance contract shall satisfy §285.7(d) of this title.

(4) Electrical wiring. Electrical wiring for proprietary systems shall be according to §285.34(c) of this title.

(5) Approval of proprietary treatment systems. Proprietary treatment systems must be approved by the executive director prior to their installation and use. Approval of proprietary treatment systems shall follow the procedures found in this section. After the effective date of these rules, only systems tested according to subparagraph (A) or (B) of this paragraph will be placed on the list of approved systems. The list may be obtained from the executive director. All systems on the list of approved systems on the effective date of these rules shall continue to be listed subject to the retesting requirements in paragraph (6) of this subsection. In addition, all proprietary treatment systems undergoing testing under this paragraph on the effective date of these rules shall be considered for inclusion on the list of approved systems.

(A) Treatment systems that have been tested by and are currently listed by NSF [~~National Sanitation Foundation (NSF)~~] International as Class I systems under NSF Standard 40 (2005) or have been tested and certified as Class I systems according to NSF Standard 40 (2005), by an American National Standard Institute (ANSI) accredited testing institution, or under any other standards approved by the executive director, shall be considered for approval by the executive director. All systems approved by the executive director on the effective date of these rules shall continue to be listed on the list of approved systems, subject to retesting under the requirements of NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director. The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director.

(i) Proprietary units under this section have been approved to treat flows equal to or less than their rated capacity and with an influent wastewater strength ranging from a 30-day average Carbonaceous Biochemical Oxygen Demand (CBOD) concentration between 100 milligrams per liter (mg/l) and 300 mg/l and a 30-day average TSS concentration between 100 mg/l and 350 mg/l.

(ii) Proprietary units may be used as components in an overall treatment system treating influent stronger than the ranges listed in this section. However, the overall treatment system will be considered a non-standard treatment system and shall meet the requirements set forth in subsection (d) of this section.

(B) Treatment systems that will not be accepted for testing because of system size or type by NSF International, or ANSI accredited third party testing institutions, and are not approved systems

at the time of the effective date of these rules, may only be approved in the following manner.

(i) The proprietary systems shall be tested by an independent third party for two years and all the supporting data from the test shall be submitted to the executive director for review and approval, or denial before the system is marketed for sale in the state.

(ii) The independent third party shall obtain a temporary authorization from the executive director before testing. The temporary authorization shall contain the following:

(I) the number of systems to be tested (between 20 and 50);

(II) the location of the test sites (the test sites must be typical of the sites where the system will be used if final authorization is granted);

(III) provisions as to how the proprietary system will be installed and maintained;

(IV) the testing protocol for collecting and analyzing samples from the system;

(V) the equipment monitoring procedures, if applicable; and

(VI) provisions for recording data and data retention necessary to evaluate the performance as well as the effect of the proprietary system on public health, groundwater, and surface waters.

(iii) Permitting authorities may issue authorizations to construct upon receipt of the temporary authorization. The owner must be advised, in writing, that the system is temporarily approved for testing. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense. A system installed under this subparagraph is the responsibility of the manufacturer until the system has obtained final authorization by the executive director according to this subparagraph.

(iv) Upon completion of the two-year test period, the executive director shall require the independent third party to submit a detailed report on the performance of the system. After evaluating the report, the executive director may issue conditional approval of the system, or may deny use of the system.

(I) The conditional approval will authorize installations only in areas similar to the area in which the system was tested.

(II) The conditional approval shall be for a specified performance and evaluation (monitoring) period, not to exceed an additional five years. The system must be monitored according to a plan approved by the executive director. Approval or disapproval of these systems will be based on their performance during the monitoring period. Failure of one or more of the installed systems may be cause for disapproval of the proprietary system. The owner must be advised, in writing, that the system is conditionally approved.

(III) If the executive director denies use of the system after the two-year period, the executive director shall provide, in writing, the reasons for denying the use of the system. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense.

(v) Upon successful completion of the monitoring period, the monitoring requirements may be lifted by the executive director, the notice of approval may be made permanent for the test systems and the systems will be deemed suitable for use in conditions similar to areas in which the systems were tested and monitored.

(6) System reviews. The manufacturers of systems that are approved for listing under this section shall ensure that their systems are reviewed every seven years, or as often as deemed necessary by the executive director, starting from the date the system was originally added to the executive director's approved list. All reviews shall be completed before the end of the seven-year period. The manufacturer of any system that was approved by the executive director more than seven years before the effective date of these rules, will be given 365 days from the effective date of these rules to complete a review.

(A) The review shall be performed by either an ANSI accredited institution according to the reevaluation requirements in NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997), or under any standards approved by the executive director, or by an independent third party for those systems not tested under NSF Standard 40.

(B) If the system being reviewed was not approved under the requirements of NSF Standard 40, the independent third party shall evaluate between 20 and 50 systems in the state that have been in operation for at least two years and are the same design as originally approved.

(C) The review under this subsection shall include an evaluation of:

(i) the short-term and long-term effectiveness of the system;

(ii) the structural integrity of the system;

(iii) the maintenance of the system;

(iv) owner access to maintenance support;

(v) any impacts that system failures may have had on the environment; and

(vi) an evaluation of the effectiveness of the manufacturer's installer training program.

(D) Any system that is not approved by the executive director as a result of the review will be removed from the list of approved systems. The manufacturer shall ensure that maintenance support remains available for the existing systems.

(d) Non-standard treatment systems. All OSSFs not described or defined in subsections (b) and (c) of this section are non-standard treatment systems. These systems shall be designed by a professional engineer or a professional sanitarian in accordance with §285.91(9) of this title, and the planning materials shall be submitted to the permitting authority for review according to §285.5(b)(2) of this title (relating to Submittal Requirements for Planning Materials). Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority.

(1) Non-standard treatment systems include all forms of the activated sludge process, rotating biological contactors, recirculating sand filters, trickling type filters, submerged rock biological filters, and sand filters not described in subsection (b)(2) of this section.

(2) The planning materials for non-standard treatment systems submitted for review will be evaluated using the criteria established in this chapter, or basic engineering and scientific principles.

(3) Approval for a non-standard treatment system is limited to the specific system described in the planning materials. Approval is on a case-by-case basis only.

(4) The need for ongoing maintenance contracts shall be determined by the permitting authority based on the review required by §285.5(b) of this title. If the permitting authority determines that a maintenance contract is required, the contract must meet the requirements in §285.7 of this title.

(5) Electrical wiring for non-standard treatment systems shall be installed according to §285.34(c) [~~§285.34(e)(4)~~] of this title.

(e) Effluent quality. The following effluent criteria shall be met by the treatment systems for those disposal systems listed in §285.33 of this title that require secondary treatment.
Figure: 30 TAC §285.32(e) (No change.)

(f) Other Design Considerations.

(1) Restaurant/food establishment sewage. When designing for restaurants, food service establishments, or similar activities, the minimum design strength value shall be 1,200 mg/l Biochemical Oxygen Demand (BOD) after a properly sized grease trap/interceptor. It is the responsibility of the designer to properly design a system which reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required.

(2) Other high-strength sewage. For situations where sewage as defined in this chapter is expected to be a higher strength than residential sewage, it is the responsibility of the professional designer to justify sewage design strength estimations and properly design a system that reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required. Residential sewage is sewage that has a strength of less than 300 mg/l BOD.

(3) Flow equalization. The designer should consider whether flow-equalization will be needed for the treatment system to function properly.

§285.33. Criteria for Effluent Disposal Systems.

(a) General requirements.

(1) All disposal systems in this section shall have an approved treatment system as specified in §285.32(b) - (d) of this title (relating to Criteria for Sewage Treatment Systems).

(2) All criteria in this section shall be met before the permitting authority issues an authorization to construct.

(3) The pipe between all treatment tanks and the pipe from the final treatment tank to a gravity disposal system shall be a minimum of three inches in diameter and be American Society for Testing and Materials (ASTM) 3034, Standard dimension ratio (SDR) 35 polyvinyl chloride (PVC) pipe or a pipe with an equivalent or stronger pipe stiffness at a 5% deflection. The pipe must maintain a continuous fall to the disposal system.

(4) The pipe from the final treatment tank to a gravity disposal system shall be a minimum of five feet in length.

(5) Except for drip irrigation tubing, pipe under internal pressure within any part of an on-site sewage facility system shall meet the minimum requirements of ASTM Schedule 40.

(6) Pipe that crosses drainage easements shall be sleeved with ASTM Schedule 40 pipe; the pipes shall be buried at least one foot below the surface, or buried less than one foot and encased in concrete; the outside pipe shall have locater tape attached to the pipe; and markers shall be placed at the easement boundaries to indicate the location of the pipe crossing. Crossings shall be designed and constructed in a manner that protects the pipe and the drainage way from erosion.

(b) Standard disposal systems. Acceptable standard disposal methods shall consist of a drainfield to disperse the effluent either into adjacent soil (absorptive) or into the surrounding air through evapotranspiration (evaporation and transpiration).

(1) Absorptive drainfield. An absorptive drainfield shall only be used in suitable soil. There shall be two feet of suitable soil from the bottom of the excavation to either a restrictive horizon or to groundwater.

(A) Excavation. The excavation must be made in suitable soils as described in §285.31(b) of this title (relating to Selection Criteria for Treatment and Disposal Systems).

(i) The excavation shall be at least 18 inches deep but shall not exceed a depth of either three feet or six inches below the soil freeze depth, whichever is deeper. Single excavations shall not exceed 150 feet.

(ii) In areas of the state where annual precipitation is less than 26 inches per year (as identified in the Climatic Atlas of Texas, (1983) published by the Texas Department of Water Resources or other standards approved by the executive director), the maximum permissible excavation depth shall be five feet.

(iii) Multiple excavations must be separated horizontally by at least three feet of undisturbed soil. The sidewalls and bottom of the excavation must be scarified as needed. When there are multiple excavations, it is recommended that the ends be looped together.

(iv) The bottom of the excavation shall be not less than 18 inches in width.

(v) The bottom of the excavation shall be level to within one inch over each 25 feet of excavation or within three inches over the entire excavation, whichever is less.

(vi) If the borings or backhoe pits excavated during the site evaluation encounter a rock horizon and the site evaluation shows that there is both suitable soil from the bottom of the rock horizon to two feet below the bottom of the proposed excavation and no groundwater anywhere within two feet of the bottom of the proposed excavation, a standard subsurface disposal system may be used, providing the following are met.

(I) The depth of the excavation shall comply with clause (i) of this subparagraph.

(II) The rock horizon shall be at least six inches above the bottom of the excavation.

(III) Surface runoff shall be prevented from flowing over the disposal area.

(IV) Subsurface flow along the top of the rock horizon shall be prevented from flowing into the excavation.

(V) The sidewall area will not be counted toward the required absorptive area.

(VI) The formulas in clause (vii)(I) - (III) of this subparagraph shall be adjusted so that no credit is given for sidewall area.

(VII) No single pipe drainfields on sloping ground as shown in §285.90(5) of this title (relating to Figures) or no systems using serial loading shall be used.

(vii) The size of the excavation shall be calculated using data from §285.91(1) and (3) of this title (relating to Tables). The soil application rate is based on the most restrictive horizon along

the media, or within two feet below the bottom of the excavation. The formula A = Q/Ra shall be used to determine the total absorptive area where:
Figure: 30 TAC §285.33(b)(1)(A)(vii) (No change.)

(I) The absorptive area shall be calculated by adding the bottom area (L x W) of the excavation to the total absorptive area along the excavated perimeter 2(L+W), (in feet) multiplied by one foot.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(I) (No change.)

(II) The length of the excavation may be determined as follows when the area and width are known.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(II) (No change.)

(III) For excavations three feet wide or less, use the following formula, or §285.91(8) of this title to determine L.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(III) (No change.)

(B) Media. The media shall consist of clean, washed and graded gravel, broken concrete, rock, crushed stone, chipped tires, or similar aggregate that is generally one uniform size and approved by the executive director. The size of the media must range from 0.75 - 2.0 inches as measured along its greatest dimension except as noted in clause (i) of this subparagraph.

(i) If chipped tires are used:

(I) a geotextile fabric heavier than specified in subparagraph (E) of this paragraph must be used; and

(II) the size of the chipped tires must not exceed three inches as measured along their greatest dimension.

(ii) Soft media such as oyster shell and soft limestone shall not be used.

(C) Drainline. The drainline shall be constructed of perforated distribution pipe and fittings in compliance with any one of the following specifications:

(i) three- or four-inch diameter PVC pipe with an SDR of 35 or stronger;

(ii) four-inch diameter corrugated polyethylene, ASTM F405 in rigid ten foot joints;

(iii) three- or four-inch diameter polyethylene smoothwall, ASTM F810;

(iv) three- or four-inch diameter PVC ASTM D2729 pipe;

(v) three- or four-inch diameter polyethylene ASTM F892 corrugated pipe with a smoothwall interior and fittings; or

(vi) any other pipe approved by the executive director.

(D) Drainline installation requirements. The drainline shall be placed in the media with at least six inches of media between the bottom of the excavation and the bottom of the drainline. The drainline shall be completely covered by the media and the drainline perforations shall be below the horizontal center line of the pipe. For typical drainfield configurations, see §285.90(5) of this title. For excavations greater than four feet in width, the maximum distance between parallel drainlines shall be four feet (center to center). Multiple drainlines shall be manifolded together with solid or perforated pipe. Additionally, the ends of the multiple drainlines opposite the manifolded end shall either be manifolded together with a solid line, looped together using a perforated pipe and media, or capped.

(E) Permeable soil barrier. Geotextile fabric shall be used as the permeable soil barrier and shall be placed between the top of the media and the excavation backfill. Geotextile fabric shall conform to the following specifications for unwoven, spun-bounded polypropylene, polyester, or nylon filter wrap.
Figure: 30 TAC §285.33(b)(1)(E) (No change.)

(F) Backfilling. Only Class Ib, II, or III soils as described in §285.30 of this title (relating to Site Evaluation) shall be used for backfill. Class Ia and IV soils are specifically prohibited for use as a backfill material. The backfill material shall be mounded over the excavated area so that the center of the backfilled area slopes down to the outer perimeter of the excavated area to allow for settling. Surface runoff impacting the disposal area is not permitted and the diversion method shall be addressed during development of the planning materials.

(G) Drainfields on irregular terrain. Where the ground slope is greater than 15% but less than 30%, a multiple line drainfield may be constructed along descending contours as shown in §285.90(5) of this title. An overflow line shall be provided from the upper excavations to the lower excavations. The overflow line shall be constructed from solid pipe with an SDR of 35 or stronger, and the excavation carrying the overflow pipe shall be backfilled with soil only.

(H) Drainfield plans. A number of sketches, specifications, and details for drainfield construction are provided in §285.90(4) and (5) of this title.

(2) Evapotranspirative (ET) system. An ET system may be used in soils which are classified as unsuitable for standard subsurface absorption systems according to §285.31(b) of this title with respect to texture, restrictive horizons, or groundwater. Water saving devices must be used if an ET system is to be installed. ET systems shall only be used in areas of the state where the annual average evaporation exceeds the annual rainfall. Evaporation data is provided in §285.91(7) of this title.

(A) Liners. An impervious liner shall be used between the excavated surface and the ET system in all Class Ia soils, where seasonal groundwater tables penetrate the excavation, and where a minimum of two feet of suitable soil does not exist between the excavated surface and either a restrictive horizon or groundwater. Liners shall be rubber, plastic, reinforced concrete, gunite, or compacted clay (one foot thick or more). If the liner is rubber or plastic, it must be impervious, and each layer must be at least 20 mils thick. Rubber or plastic liners must be protected from exposed rocks and stones by covering the excavated surface with a uniform sand cushion at least four inches thick. Clay liners shall have a permeability of 10 -7 centimeters/second or less, as tested by a certified soil laboratory.

(B) ET system sizing. The following formula shall be used to calculate the top surface area of an ET system.
Figure: 30 TAC §285.33(b)(2)(B) (No change.)

(C) The owner of the ET system shall be advised by the person preparing the planning materials of the limits placed on the system by the Q selected. If the Q is less than required by §285.91(3) of this title, the flow rate shall be included as a condition to the permit, and stated in an affidavit properly filed and recorded in the deed records of the county as specified in §285.3(b)(3) of this title (relating to General Requirements).

(D) Backfill material. Backfill material shall consist of Class II soil as described in §285.30 of this title. All drainlines must be surrounded by a minimum of one foot of media. Backfill shall be used to fill the excavation between the media to allow the backfill material to contact the bottom of the excavation.

(E) Vegetative cover for transpiration. The final grade shall be covered with vegetation fully capable of taking maximum advantage of transpiration. Evergreen bushes with shallow root systems may be planted in the disposal area to assist in water uptake. Grasses with dormant periods shall be overseeded to provide year-round transpiration.

(F) ET systems. ET systems shall be divided into two or more equal excavations connected by flow control valves. One excavation may be removed from service for an extended period of time to allow it to dry out and decompose biological material which might plug the excavation. If one of the excavations is removed from service, the daily water usage must be reduced to prevent overloading of the excavation(s) still in operation. Normally, an excavation must be removed from service for two to three dry months for biological breakdown to occur.

(G) ET system plans. A number of sketches for ET system construction are provided in §285.90(4) and (5) of this title.

(3) Pumped effluent drainfield. Pumped effluent drainfields shall use the specifications for low-pressure dosed drainfields described in subsection (d)(1) of this section, with the following exceptions.

(A) Applicability. If the slope of the site is greater than 2.0%, pumped effluent drainfields shall not be used. Pumped effluent drainfields may only be used by single family dwellings.

(B) Length of distribution pipe. There shall be at least 1,000 linear feet of perforated pipe for a two bedroom single family dwelling. For each additional bedroom, there shall be an additional 400 linear feet of perforated pipe. No individual distribution line shall exceed 70 feet in length from the header.

(C) Excavation width and horizontal separation. The excavated area shall be at least six inches wide. There shall be at least three feet of separation between trenches.

(D) Lateral depth and vertical separation. All drainfield laterals shall be between 18 inches and three feet deep. There shall be a minimum vertical separation distance of one foot from the bottom of the excavation to a restrictive horizon, and a minimum vertical separation of two feet from the bottom of the excavation to groundwater.

(E) Media. Each dosing pipe shall be placed with the drain holes facing down and placed on top of at least six inches of media (pea gravel or media up to two inches measured along its greatest dimension).

(F) Pipe and hole size. The distribution (dosing) and manifold (header) pipe shall be 1.25 - 1.5 inches in diameter. The manifold may have a diameter larger than the distribution pipe, but shall not exceed 1.5 inches in diameter. Distribution (dosing) pipe holes shall be 3/16 - 1/4 inch in diameter and shall be spaced five feet apart.

(G) Pump size. Pumped effluent drainfields shall use at least a 1/2 horsepower pump.

(H) Backfilling. Only Class Ib, II, or III soils as described in §285.30(b)(1)(A) of this title shall be used for backfill.

(c) Proprietary disposal systems.

(1) Gravel-less drainfield piping. Gravel-less pipe may be used only on sites suitable for standard subsurface sewage disposal methods. Gravel-less pipe shall be eight-inch or ten-inch diameter corrugated perforated polyethylene pipe. The pipe shall be enclosed in a layer of unwoven spun-bonded polypropylene, polyester, or nylon filter wrap. Gravel-less pipe shall meet ASTM F-667 Standard Specifications for large diameter corrugated high density polyethylene (ASTM D 1248) tubing. The filter cloth must meet the same material specifications as described under subsection (b)(1)(E) of this section.

(A) Planning parameters. Gravel-less drainfield pipe may be substituted for drainline pipe in both absorptive and ET systems. When gravel-less pipe is substituted, media will not be required. ET systems shall be backfilled with Class II soils only. All other planning parameters for absorptive or ET systems apply to drainfields using gravel-less pipe.

(B) Installation. The connection from the solid line leaving the treatment tank to the gravel-less line shall be made by using an eight or ten-inch offset connector. The gravel-less line shall be laid level, the continuous stripe shall be up, and the lines shall be joined together with couplings. A filter cloth must be pulled over the joint to eliminate soil infiltration. The gravel-less pipe must be held in place during initial backfilling to prevent movement of the pipe. The end of each gravel-less line shall have an end cap and an inspection port. The inspection port shall allow for easy monitoring of the amount of sludge or suspended solids in the line, and allow the distribution lines to be back-flushed.

(C) Drainfield sizing. To determine appropriate drainfield sizing, use a drainfield width of W = 2.0 feet for an eight-inch diameter gravel-less pipe, and an excavation width of W = 2.5 for a ten-inch gravel-less pipe.
Figure: 30 TAC §285.33(c)(1)(C) (No change.)

(2) Leaching chambers. Leaching chambers are bottomless chambers that are installed in a drainfield excavation with the open bottom of the chamber in direct contact with the excavation. The ends of the chamber rows shall be linked together with non-perforated sewer pipe. The chambers shall completely cover the excavation, and adjacent chambers must be in contact with each other in such a manner that the chambers will not separate. To obtain the reduction in drainfield size allowed in subparagraph (A)(i) and (ii) of this paragraph for excavations wider than the chambers, the chambers shall be placed edge to edge.

(A) The following formulas shall be used to determine the length of an excavation using leaching chambers.

(i) The following formula is used for leaching chambers without water saving devices and the excavation is the same width as the chamber.
Figure: 30 TAC §285.33(c)(2)(A)(i) (No change.)

(ii) The following formula is used for leaching chambers with water saving devices and the excavation is the same width as the chamber.
Figure: 30 TAC §285.33(c)(2)(A)(ii) (No change.)

(iii) The following formula is used for leaching chambers without water saving devices and the excavation width is greater than the width of the chamber.
Figure: 30 TAC §285.33(c)(2)(A)(iii) (No change.)

(iv) The following formula is used for leaching chambers with water saving devices and the excavation width is greater than the width of the chamber.
Figure: 30 TAC §285.33(c)(2)(A)(iv) (No change.)

(B) Leaching chambers shall not be used for absorptive drainfields in Class Ia or IV soils. Leaching chambers may be used instead of media in ET systems, low-pressure dosed drainfields, and soil substitution drainfields; however, the size of the drainfield shall not be reduced from the required area.

(C) Backfill covering leaching chambers shall be Class Ib, II, or III soil.

(3) Drip irrigation. Drip irrigation systems using secondary treatment may be used in all soil classes including Class IV soils. The system must be equipped with a filtering device capable of filtering particles larger than 100 microns and that meets the manufacturer's requirements.

(A) Drainfield layout. The drainfield shall consist of a matrix of small-diameter pressurized lines, buried at least six inches deep, and pressure reducing emitters spaced at a maximum of 30-inch intervals. The pressure reducing emitter shall restrict the flow of effluent to a flow rate low enough to ensure equal distribution of effluent throughout the drainfield.

(B) Effluent quality. The treatment preceding a drip irrigation system shall treat the wastewater to secondary treatment as described in §285.32(e) of this title unless the drip irrigation system has been approved by the executive director as a proprietary disposal system without the use of secondary treatment.

(C) System flushing. Systems must be equipped to flush the contents of the lines back to the pretreatment unit when intermittent flushing is used. If continuous flushing is used during the pumping cycle, the contents of the lines must be returned to the pump tank.

(D) Loading rates. Pressure reducing emitters can be used in all classes of soils using loading rates specified in §285.91(1) of this title. Pressure reducing emitters are assumed to wet four square feet of absorptive area per emitter; however, overlapping areas shall only be counted once toward absorptive area requirements. The loading rate shall be based on the most restrictive soil horizon within one foot of the pressure reducing emitter. When solid rock is less than 12 inches below the pressure reducing emitter, the loading rate shall be based on Class IV soils.

(E) Vertical separation distance. There shall be a minimum of one foot of soil (with less than 60% gravel) between the pressure reducing emitter and groundwater and six inches between the pressure reducing emitter and solid rock, or fractured rock. For proprietary disposal systems that do not pretreat to secondary treatment, there shall be two feet of soil (with less than 30% gravel) between the groundwater and pressure reducing emitter and one foot of soil between solid rock or fractured rock and the pressure reducing emitter.

(F) Labeling or listing. All drip irrigation system devices shall either be labeled by the manufacturer as suitable for use with domestic sewage, or be on the list of approved devices maintained by the executive director according to §285.32(c)(4) of this title.

(4) Approval of proprietary disposal systems. All proprietary disposal systems, other than those described in this section, shall be approved by the executive director before they may be used. Proprietary disposal systems shall be approved by the executive director using the procedures established in §285.32(c)(5) [~~§285.32(e)(4)(B)~~] of this title.

(d) Nonstandard disposal systems. All disposal systems not described or defined in subsections (b) and (c) of this section are nonstandard disposal systems. Planning materials for nonstandard disposal systems must be developed by a professional engineer or professional sanitarian using basic engineering and scientific principles. The planning materials for paragraphs (1) - (5) of this subsection shall be submitted to the permitting authority and the permitting authority shall review and either approve or disapprove them on a case-by-case basis according to §285.5 of this title (relating to Submittal Requirements for Planning Materials). Electrical wiring for nonstandard disposal systems shall be installed according to §285.34(c) of this title (relating to Other Requirements). Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority. Approval for a nonstandard disposal system is limited to the specific system described in the planning materials for the specific location. The systems identified in paragraphs (1) - (5) of this subsection must meet these requirements, in addition to the requirements identified for each specific system in this section.

(1) Low-pressure dosed drainfield. Effluent from this type of system shall be pumped, under low pressure, into a solid wall force main and then into a perforated distribution pipe installed within the drainfield area.

(A) The effluent pump in the pump tank must be capable of an operating range that will assure that effluent is delivered to the most distant point of the perforated piping network, yet not be excessive to the point that blowouts occur.

(B) A start/stop switch or timer must be included in the system to control the dosing pump. An audible and visible high water alarm, on an electric circuit separate from the pump, must be provided.

(C) Pressure dosing systems shall be installed according to either design criteria in the North Carolina State University Sea Grant College Publication UNC-S82-03 (1982) or other publications containing criteria or data on pressure dosed systems which are acceptable to the permitting authority. Additionally, the following sizing parameters are required for all low-pressure dosed drainfields and shall be used in place of the sizing parameters in the North Carolina State University Sea Grant College Publication or other acceptable publications.

(i) The low-pressure dosed drainfield area shall be sized according to the effluent loading rates in §285.91(1) of this title and the wastewater usage rates in §285.91(3) of this title. The effluent loading rate (Ra) in the formula in §285.91(1) of this title shall be based on the most restrictive horizon one foot below the bottom of the excavation. Excavated areas can be as close as three feet apart, measured center to center. All excavations shall be at least six inches wide. To determine the length of the excavation, use the following formulas, where L = excavation length, and A = absorptive area.

(I) If the media in the excavation is at least one foot deep, the length of the excavation is L = A/(w+2) where:

(-a-) w = the width of the excavation for excavations one foot wide or greater; or

(-b-) w = 1 for all excavations less than one foot wide.

(II) If the media in the excavation is less than one foot deep, the length of the excavation is L = A/(w + 2H), where H = the depth of the media in feet and:

(-a-) w = the width of the excavation for excavations one foot wide or greater; or

(-b-) w = 1 for all excavations less than one foot wide.

(ii) Each dosing pipe shall be placed with the drain holes facing down and placed on top of at least six inches of media (pea gravel or media up to two inches measured along the greatest dimension).

(iii) Geotextile fabric meeting the criteria in subsection (b)(1)(E) of this section shall be placed over the media. The excavation shall be backfilled with Class Ib, II, or III soil.

(iv) There shall be a minimum of one foot of soil (with less than 30% gravel) between the bottom of the excavation and solid or fractured rock. There shall be a minimum of two feet of soil (with less than 30% gravel) between the bottom of the excavation and groundwater.

(2) Surface application systems. Surface application systems include those systems that spray treated effluent onto the ground.

(A) Acceptable surface application areas. Land acceptable for surface application shall have a flat terrain (with less than or equal to 15% slope) and shall be covered with grasses, evergreen shrubs, bushes, trees, or landscaped beds containing mixed vegetation. There shall be nothing in the surface application area within ten feet of the sprinkler which would interfere with the uniform application of the effluent. Sloped land (with greater than 15%) may be acceptable if it is properly landscaped and terraced to minimize runoff.

(B) Unacceptable surface application areas. Land that is used for growing food, gardens, orchards, or crops that may be used for human consumption, as well as unseeded bare ground, shall not be used for surface application.

(C) Technical report. A technical report shall be prepared for any system using surface application and shall be submitted with the planning materials required in §285.5(a) of this title. The technical report shall describe the operation of the entire on-site sewage facility OSSF system, and shall include construction drawings, calculations, and the system flow diagram. Proprietary aerobic systems may reference the executive director's approval list instead of furnishing construction drawings for the system.

(D) Effluent disinfection. Treated effluent must be disinfected before surface application. The effluent quality in the pump tank must meet the minimum required test results specified in §285.91(4) of this title. All new disinfection equipment shall be listed as approved dispensers or disinfection devices for wastewater systems by NSF [~~National Sanitation Foundation (NSF)~~] NSF International or by an ANSI accredited testing institution under ANSI/NSF Standard 46, or approved by the executive director. After January 1, 2016, all new disinfection equipment shall be listed as disinfection devices for wastewater systems by NSF International or by an ANSI accredited testing institution under ANSI/NSF Standard 46, or approved by the executive director. Installation of disinfection devices on new systems shall be performed by a licensed installer II. Tablet or other dry chlorinators shall use calcium hypochlorite properly labeled for wastewater disinfection. The effectiveness of the disinfection procedure will be established by monitoring either the fecal coliform count or total chlorine residual from representative effluent grab samples as directed in the testing and reporting schedule. The frequency of testing, the type of tests, and the required results are shown in §285.91(4) of this title. Replacement of disinfection devices on existing systems may be considered an emergency repair as described in §285.35 of this title (relating to Emergency Repairs) and shall be performed by either a licensed installer II, a licensed maintenance provider, or a registered maintenance technician.

(E) Minimum required application area. The minimum surface application area required shall be determined by dividing the daily usage rate (Q), established in §285.91(3) of this title, by the allowable surface application rate (Ri = effective loading rate in gallons per square foot per day) found in §285.90(1) of this title or as approved by the permitting authority.

(F) Landscaping plan. Applications for surface application disposal systems shall include a landscape plan. The landscape plan shall describe, in detail, the type of vegetation to be maintained in the disposal area. Surface application systems may apply treated and disinfected effluent upon areas with existing vegetation. If any ground within the proposed surface application area does not have vegetation, that bare area shall be seeded or covered with sod before system start-up. The vegetation shall be capable of growth, before system start-up.

(G) Uniform application of effluent. Distribution pipes, sprinklers, and other application methods or devices must provide uniform distribution of treated effluent. The application rate must be adjusted so that there is no runoff.

(i) Sprinkler criteria. The maximum inlet pressure for sprinklers shall be 40 pounds per square inch. Low angle nozzles (15 degrees or less in trajectory) shall be used in the sprinklers to keep the spray stream low and reduce aerosols. If the separation distance between the property line and the edge of the surface application area is less than 20 feet, sprinkler operation shall be controlled by [~~commercial irrigation~~] timers set to spray between midnight and 5:00 a.m.

(ii) Planning criteria. Circular spray patterns may overlap to cover all irrigated area including rectangular shapes. The overlapped area will be counted only once toward the total application area. For large systems, multiple sprinkler heads are preferred to single gun delivery systems.

(iii) Effluent storage and pumping requirements.

(I) For systems controlled by a [~~commercial irrigation~~] timer and required to spray between midnight and 5:00 a.m., there shall be at least one day of storage between the alarm-on level and the pump-on level, and a storage volume of one-third the daily flow between the alarm-on level and the inlet to the pump tank.

(II) For systems not controlled by a [~~commercial irrigation~~] timer, the minimum dosing volume shall be at least one-half the daily flow, and a storage volume of one-third the daily flow between the alarm-on level and the inlet to the pump tank.

(III) Pump tank construction and installation shall be according to §285.34(b) of this title.

(iv) Distribution piping. Distribution piping shall be installed below the ground surface and hose bibs shall not be connected to the distribution piping. An unthreaded sampling port shall be provided in the treated effluent line in the pump tank.

(v) Color coding of distribution system. All new distribution piping, [~~fittings,~~] valve box covers, and sprinkler tops shall be permanently colored purple to identify the system as a reclaimed water system according to Chapter 210 of this title (relating to Use of Reclaimed Water).

(3) Mound drainfields. A mound drainfield is an absorptive drainfield constructed above the native soil surface. The mound consists of a distribution area installed within fill material placed on the native soil surface. The required area of the fill material is a function of the texture of the native soil surface, the depth of the native soil, basal area sizing considerations, and sideslope requirements. A description of mound construction, as well as construction requirements not addressed in this section can be found in the North Carolina State University Sea Grant College Publication UNC-SG-82-04 (1982).

(A) A mound drainfield shall only be installed at a site where there is at least one foot of native soil; however, approval for installation on sites with less than one foot of native soil may be granted by the permitting authority on a case-by-case basis.

(B) Mounds and mound distribution systems must be constructed with the longest dimension parallel to the contour of the site.

(C) Soil classification, loading rates (R(a)), and wastewater usage rates (Q) shall all be obtained from this chapter.

(D) The depth of soil material (with less than 30% gravel) between the bottom of the media and a restrictive horizon must

be at least 1.5 feet to the restrictive horizon or two feet to groundwater. The soil material includes both the fill and the native soil.

(E) The distribution area is defined as the interface area between the media containing the distribution piping and the fill material or the native soil, if applicable. The distribution length is the dimension parallel with the contour and equivalent to the length of the distribution media which must also run parallel with the contour. The distribution lines within the distribution media must extend to 12 inches of the end of the distribution media. The distribution width is defined as the distribution area divided by the distribution length.

(i) The formula A(d) = Q/R(a) shall be used for calculating the minimum required distribution area of the mound where: Figure: 30 TAC §285.33(d)(3)(E)(i) (No change.)

(ii) The area credited toward the minimum required distribution area can be determined in either of the following ways.

(I) If the distribution area consists of a continuous six-inch layer of media over the fill, the credited area is the bottom interface area between the media and soil beneath the media.

(II) If the distribution area consists of rows of media and distribution piping, the credited area can be calculated using the formulas listed in paragraph (1)(C)(i)(I) or (II) of this subsection depending on the depth of the media.

(iii) For sites with greater than 2% slopes and solid bedrock, saturated zones, or class IV horizons within two feet of the native soil surface, the length to width ratio of the distribution area must be at least 7:1. For sites with greater than 2% slopes and no solid bedrock, saturated zones, or class IV horizons within two feet of the native soil surface, the length to width ratio of the distribution area must be at least 4:1. No length to width ratio is required on a site with 2% slope or less.

(iv) Effluent must be pressure dosed into the distribution piping to ensure equal distribution and to control application rates.

(v) If a continuous layer of media is used, the dosing lines must not be spaced more than three feet apart. If rows of media are used, the rows may be as close as three feet apart, measured edge to edge.

(vi) The dosing holes must not be greater than three feet apart.

(F) The basal area is defined as the interface area between the native soil surface and the fill material. The formula A(b) = Q/R(a) must be used for calculating the minimum required basal area of the mound where: A(b) = minimum required basal absorptive area in square feet; Q = design wastewater usage rate in gallons per day; R(a) = application rate of the native soil surface in gallons per square foot per day.

(i) On sites with greater than 2% slope, the area credited toward the required minimum basal area is computed by multiplying the length of the distribution system by the distance from the upslope edge of the distribution system to the downslope toe of the mound.

(ii) On sites with 2% slopes or less, the area credited toward the minimum required basal area sizing includes all areas below the distribution system as well as the side slope area on all side slope areas greater than six inches deep.

(G) Mounds shall only be installed on sites with less than 10% slope.

(H) The toe of the mound is considered the edge of the soil absorption system.

(I) The side slopes must be no steeper than three to one.

(J) There must be at least six inches of backfill over the distribution media and the mound shall be crowned to shed water.

(4) Soil substitution drainfields. Soil substitution drainfields may be constructed in Class Ia soils, highly permeable fractured rock, highly permeable fissured rock, or Class II and III soils with greater than 30% gravel.

(A) A soil substitution drainfield must not be used in Class IV soils or Class IV soils with greater than 30% gravel. Class III or IV soil shall not be used as the substituted soil in a soil substitution drainfield. There must be at least two feet of substituted soil between the bottom of the media and groundwater.

(B) A soil substitution drainfield is constructed similar to a standard absorptive drainfield except that a minimum two foot thick Class Ib or Class II soil buffer shall be placed below and on all sides of the drainfield excavation. The soil buffer must extend at least to the top of the media. The two-foot buffer area along the sides of the excavation is not credited as bottom area in calculating absorptive area. However, the interface between the media and the substituted soil is credited as absorptive area.

(C) Soil substitution drainfields must be designed to address soil compaction to prevent unlevel disposal. It is recommended that low-pressure dosing be used for effluent distribution. The edge of the substituted soil is considered the edge of the soil absorption drainfield in determining the appropriate separation distances as listed in §285.91(10) of this title.

(D) Class Ia soils do not provide adequate treatment of wastewater through soil contact. A soil substitution drainfield may be constructed in Class Ia soils in order to provide adequate soil for treatment. Absorptive area sizing must be based on the textural class of the substituted soil and must follow the formulas in subsection (b)(1)(A)(vii)(I) of this section.

(E) Highly permeable fractured and fissured rock, which contains soil in the fractures and fissures, does not provide adequate treatment of wastewater through soil contact. A soil substitution drainfield can be constructed in this permeable fractured and fissured rock in order to provide adequate soil for treatment. Absorptive area sizing must be based on the most restrictive textural class between either the native soil residing in the fractures or fissures or the substituted soil. The sizing must follow the formulas in subsection (b)(1)(A)(vii)(I) of this section.

(F) Class II and III soils with greater than 30% gravel do not provide adequate treatment of wastewater through soil contact. A soil substitution drainfield can be constructed in Class II or III soils with greater than 30% gravel in order to provide adequate soil for treatment. Absorptive area sizing must be based on the most restrictive textural class between either the non-gravel portion of the native soil or the substituted soil. The sizing must follow the formulas in subsection (b)(1)(A)(vii)(I) of this section.

(5) Drainfields following secondary treatment and disinfection. Subsurface drainfields following secondary treatment and disinfection may be constructed in Class Ia soils, fractured rock, fissured rock, or other conditions where insufficient soil depth will allow septic tank effluent to reach fractured rock or fissured rock, as long as the following conditions are met.

(A) Drainfield sizing.

(i) If the unsuitable feature is Class Ia soil, the disposal area sizing shall be based on the application rate for Class Ib soil. Some form of pressure distribution shall be used for effluent disposal.

(ii) If the unsuitable feature is fractured or fissured rock, the system sizing should be based on the application rate for Class III soil. Some form of pressure distribution system shall be used for effluent disposal.

(B) Effluent disinfection. Treated effluent must be disinfected as indicated in §285.32(e) of this title before discharging into the drainfield.

(C) Other requirements. The affidavit, maintenance, and testing and reporting requirements of §285.3(b)(3) of this title and §285.7(a) and (d) of this title (relating to Maintenance Requirements) apply to these systems.

(6) All other nonstandard disposal systems. The planning materials for all non-standard disposal systems not described in paragraphs (1) - (5) of this subsection shall be submitted to the executive director for review according to §285.5(b)(2) of this title before the systems can be installed.

§285.34. Other Requirements.

(a) Septic tank effluent filters. Effective 180 days after the effective date of these rules, all effluent filters that are installed in septic tanks shall be listed and approved under the NSF [~~National Sanitation Foundation (NSF)~~] International Standard 46 (2000) or under any standard approved by the executive director.

(b) Pump tanks. Pump tanks may be necessary when the septic tank outlet is at a lower elevation than the disposal field or for systems that require pressure disposal. All requirements in §285.32(b)(1)(D) - (F) of this title (relating to Criteria for Sewage Treatment Systems) also apply to pump tanks. The pump tank shall be constructed according to the following specifications.

(1) Pump tank criteria. When effluent must be pumped to a disposal area, an appropriate pump shall be placed in a separate water-tight tank or chamber. A check valve may be required if the disposal area is above the pump tank. The pump tank shall be equipped to prevent siphoning. The tank shall be provided with an audible and visible high water alarm. If an electrical alarm is used, the power circuit for the alarm shall be separate from the power circuit for the pump. Batteries may be used for back-up power supply only. All electrical components shall be listed and labeled by Underwriters Laboratories (UL). At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the riser(s) may be required.

(2) Pump tank sizing. Pump tanks shall be sized to contain one-third of a day's flow between the alarm-on level and the inlet to the pump tank. The capacity above the alarm-on level may be reduced to four hours average daily flow if the pump tank is equipped with multiple pumps. See §285.33(d)(2)(G)(iii) of this title (relating to Criteria for Effluent Disposal Systems) for sizing of pump tanks for surface application systems.

(3) Pump specifications. A single pump may be used for hydraulic flows equal to or less than 1,000 gallons per day. Dual pumps are required for hydraulic flows greater than 1,000 gallons per day. A dual pump system shall have the "alarm on" level below the "second pump on" level, and shall have a lock-on feature in the alarm circuit so that once it is activated it will not go off when the second pump draws the liquid level below the "alarm on" level. All audible and visible alarms shall have a manual "silence" switch. The pump switchgear shall be set such that each pump operates as the first pump on an alternating basis. All pumps shall be rated by the manufacturer for pumping sewage or sewage effluent.

(4) Equalization tanks. In addition to the requirements for pump tanks in this section, equalization tanks shall meet the following criteria:

(A) The equalization tank must be preceded by a pretreatment tank.

(B) If an equalization tank is serving residences, the tank shall have a volume between the pump intake level and the high water level of at least 50% of the design flow and be designed to time dose at equal intervals and equal doses throughout a 24-hour period. The tank may contain a gravity line located above the high water alarm level which allows flow to the aerobic treatment unit. The design will use no fewer than 12 doses throughout the 24-hour period.

(C) If an equalization tank is designed to equalize flows over periods longer than a 24-hour period, the tank shall be designed to time dose at equal intervals and equal doses over the flow equalization time period. The design shall have a storage between the highest wastewater flow line during the period and the high level alarm equal to at least 20% of the flow generated during peak days. The tank may contain a gravity line located above the high water alarm level which allows flow to the aerobic treatment unit.

(c) Electrical wiring. All electrical wiring and their conduits shall conform to the requirements of the National Electric Code (1999) or under any other standards approved by the executive director. Additionally, all external wiring shall be installed in approved, rigid, non-metallic gray code electrical conduit. The conduit shall be buried according to the requirements in the National Electrical Code and terminated at a main circuit breaker panel or sub-panel. The permitting authority may approve up to four feet of external wiring to be contained in water-tight, flexible electrical conduit between the buried wire and the circuit breaker panel or sub-panel. Any external wiring that exceeds four feet must be contained in rigid, non-metallic gray code electrical conduit. Connections shall be in approved junction boxes. All electrical components shall have an electrical disconnect within direct vision from the place where the electrical device is being serviced. Electrical disconnects must be weatherproof (approved for outdoor use) and have maintenance lockout provisions.

(d) Grease interceptors. Grease interceptors shall be used on kitchen waste-lines from institutions, hotels, restaurants, schools with lunchrooms, and other buildings that may discharge large amounts of greases and oils to the OSSF. Grease interceptors shall be structurally equivalent to, and backfilled according to, the requirements established for septic tanks under §285.32(b)(1)(D) - (F) of this title. The interceptor shall be installed near the plumbing fixture that discharges greasy wastewater and shall be easily accessible for cleaning. Grease interceptors shall be cleaned out periodically to prevent the discharge of grease to the disposal system. Grease interceptors shall be properly sized and installed according to the requirements of the 2000 edition of the Uniform Plumbing Code, the 1980 EPA Design Manual: Onsite Wastewater Treatment and Disposal Systems, or other prevailing code.

(e) Holding tanks. Tanks shall be constructed according to the requirements established for septic tanks under §285.32(b)(1)(D) - (E) of this title. Inlet fittings are required. No outlet fitting shall be provided. A baffle is not required. Holding tanks shall be used only on sites where other methods of sewage disposal are not feasible (these holding tank provisions do not apply to portable toilets or to an office trailer at a construction site). All holding tanks shall be equipped with an audible and visible alarm to indicate when the tank has been filled to within 75% of its rated capacity. A port with its smallest dimension being at least 12 inches shall be provided in the tank lid for inspec-

tion, cleaning, and maintenance. This port shall be accessible from the ground surface and must be easily removable and watertight.

(1) Minimum capacity. The minimum capacity of the holding tank shall be sufficient to store the estimated or calculated daily wastewater flow for a period of one week (wastewater usage rate in gallons per day x seven days).

(2) Location. Holding tanks shall be installed in an area readily accessible to a pump truck under all weather conditions, and at a location that meets the minimum distance requirements in §285.91(10) of this title (relating to Tables).

(3) Pumping requirements. A scheduled pumping contract with a waste transporter, holding a current registration with the executive director, must be provided to the permitting authority before a holding tank may be installed. Pumping records must be retained for five years.

(f) Composting toilets. Composting toilets will be approved by the executive director provided the system has been tested and certified under NSF International Standard 41 (1999) or under any other standards approved by the executive director.

(g) Condensation. If condensate lines are plumbed directly into an OSSF, the increased water volume must be accounted for (added to the usage rate) in the system planning materials.

§285.38. Prevention of Unauthorized Access to On-Site Sewage Facilities (OSSFs).

(a) Applicability.

(1) The construction criteria under this subsection applies to:

(A) pretreatment (trash) tanks referenced in §285.32(b)(1)(G) of this title (relating to Criteria for Sewage Treatment Systems);

(B) proprietary treatment units referenced in §285.32(c) of this title;

(C) non-standard treatment units referenced in §285.32(d) of this title;

(D) pump tanks referenced in §285.34(b) of this title (relating to Other Requirements);

(E) holding tanks referenced in §285.34(e) of this title; and

(F) septic tanks referenced in §285.32(b)(1) of this title.

(2) The construction criteria found in this subsection is in addition to the construction criteria in §285.32 of this title.

(b) All tanks must have inspection or cleanout ports located on the tank top over all inlet and outlet devices. Each inspection or cleanout port must be offset to allow for pumping of the tank. The ports may be configured in any manner as long as the smallest dimension of the opening is at least 12 inches, and is large enough to provide for maintenance and equipment removal.

(c) For all OSSF's permitted on or after September 1, 2023, [~~With the exception of septic tanks, all~~] inspection and cleanout ports shall have risers over the port openings which extend to a minimum of two inches above grade [~~the ground surface~~]. A secondary plug, cap, or other suitable restraint system shall be provided below the riser cap to prevent tank entry if the cap is unknowingly damaged or removed.

~~[(d) All septic tanks buried more than 12 inches below the ground shall have risers over the port openings. The risers shall extend from the tank surface to no more than six inches below the ground. A secondary plug, cap, or other suitable restraint system shall be provided below the riser cap to prevent tank entry if the cap is unknowingly damaged or removed.]~~

(d) [~~(e)~~] Risers.

(1) The risers shall have inside diameters which are equal to or larger than the inspection or cleanout ports.

(2) Risers must be permanently fastened to the tank lid or cast into the tank. The connection between the riser and the tank lid must be watertight.

(3) Risers must be fitted with removable watertight caps and protected against unauthorized intrusions. Acceptable protective measures include:

(A) a padlock;

(B) a cover that can be removed with tools;

(C) a cover having a minimum net weight of 29.5 kilograms (65 pounds) set into a recess of the tank lid; or

(D) any other means approved by the executive director.

(4) Risers and riser caps exposed to sunlight must have ultraviolet light protection.

(5) Risers must be able to withstand the pressures created by the surrounding soil.

(e) [~~(f)~~] Installation of a riser to any component of a new OSSF is considered construction under this chapter and must be performed by a licensed installer.

(f) [~~(g)~~] Installation of risers for OSSF components installed on or after September 1, 2012, are considered an emergency repair as described in §285.35 of this title (relating to Emergency Repairs) and may be performed by either a licensed Installer, licensed maintenance provider, or registered maintenance technician.

(g) [~~(h)~~] Any person who accesses any secured lid(s) or cover(s) on an OSSF shall secure the lid(s) or cover(s) when access is complete.

(h) [~~(i)~~] All inspection reports sent to Authorized Agents, Regional Offices, and homeowners must document that the access to the OSSF inspection and cleanout ports was secured after the maintenance or inspection activities were completed or that the OSSF system owner refused to pay for repairs that were needed to secure the OSSF inspection and cleanout ports.

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

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Charmaine Backens
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Texas Commission on Environmental Quality
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SUBCHAPTER F. LICENSING AND REGISTRATION REQUIREMENTS FOR

INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, SITE EVALUATORS, MAINTENANCE PROVIDERS, AND MAINTENANCE TECHNICIANS

30 TAC §285.64

Statutory Authority

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over onsite sewage facilities; §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the proposal.

This rulemaking implements House Bill 1680 (87th legislative session), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

§285.64. Duties and Responsibilities of Maintenance Providers and Maintenance Technicians.

(a) A maintenance provider shall:

(1) possess a current license from the executive director;

(2) ensure maintenance of accurate records of fees, inspections, and reports;

(3) satisfy the requirements of the maintenance contract between the homeowner of the OSSF system and the maintenance provider according to §285.7 of this title (relating to Maintenance Requirements);

(4) maintain a current address and phone number with the executive director and submit any change in address or phone number to the executive director in writing within 30 days after the date of the change; and

(5) perform maintenance on each OSSF system under executed contract, keep a maintenance record, and submit maintenance reports to the permitting authority and the owner of the OSSF with [~~for~~] whom the maintenance provider is [~~installer has~~] contracted to provide maintenance, according to §285.7 of this title.

(b) A maintenance technician shall:

(1) possess a current registration from the executive director;

(2) represent his supervising maintenance provider while performing maintenance on an OSSF;

(3) perform services associated with OSSF maintenance under the direct supervision and direction of the maintenance provider on-site or be in direct communication with the maintenance provider;

(4) not receive compensation for OSSF maintenance from anyone except the supervising maintenance provider;

(5) maintain a current address and phone number with the executive director and submit any change in address or phone number to the executive director in writing within 30 days after the date of the change; and

(6) not advertise or otherwise portray themselves as a maintenance provider.

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

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SUBCHAPTER I. APPENDICES

30 TAC §285.91

Statutory Authority

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over onsite sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the proposal.

This rulemaking implements House Bill 1680 (87th legislative session), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an on-site sewage facility (OSSF).

(1) Table I. Effluent Loading Requirements Based on Soil Classification.
Figure: 30 TAC §285.91(1) (No change.)

(2) Table II. Septic Tank and Aerobic Treatment Unit Sizing.
Figure: 30 TAC §285.91(2)
[~~Figure: 30 TAC §285.91(2)~~]

(3) Table III. Wastewater Usage Rate.
Figure: 30 TAC §285.91(3) (No change.)

(4) Table IV. Required Testing and Reporting.
Figure: 30 TAC §285.91(4) (No change.)

(5) Table V. Criteria for Standard Subsurface Absorption Systems.
Figure: 30 TAC §285.91(5) (No change.)

(6) Table VI. USDA Soil Textural Classifications.
Figure: 30 TAC §285.91(6) (No change.)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).
Figure: 30 TAC §285.91(7) (No change.)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).
Figure: 30 TAC §285.91(8) (No change.)

(9) Table IX. OSSF System Designation.
Figure: 30 TAC §285.91(9) (No change.)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.
Figure: 30 TAC §285.91(10)
[~~Figure: 30 TAC §285.91(10)~~]

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).
Figure: 30 TAC §285.91(11) (No change.)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.
Figure: 30 TAC §285.91(12) (No change.)

(13) Table XIII. Disposal and Treatment Selection Criteria.
Figure: 30 TAC §285.91(13) (No change.)

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §§15.1 - 15.13

The General Land Office (GLO) proposes amendments to 31 Texas Administrative Code §§15.1 - 15.13 relating to Management of the Beach/Dune System. The GLO proposes numerous changes to these sections, and many of these are not substantive and were made to improve structural organization and clarity. Other proposed amendments include modifications to the mitigation and compensation deadlines for adverse effects to dunes and dune vegetation, new width limitations and height requirements for dune walkovers, and an allowance for a limited use of impervious cover for accessibility enhancements at commercial or public beach access facilities, as required by law. Also proposed is the addition of a requirement for at least one access way with a stable, slip-resistant surface from the dry beach to the approximate high tide line to better facilitate access to the water for persons with disabilities in areas where vehicles are prohibited from the beach. Once adopted, the rules will be effective coastwide immediately with no amendments to local governments' Beach Access and Dune Protection plans required, unless otherwise noted below.

The GLO proposes amendments to the following sections: §15.1 (relating to Policy) to enhance the goal of minimizing public expenditures on erosion and storm damage losses; §15.2 (relating to Definitions) to revise multiple definitions by providing supporting citations, clarifying language, or removing unnecessary language; §15.3 (relating to Administration) to clarify the local government plan amendment processes, extend administrative record retention, clarify and add minor requirements for permit applications, and provide more detailed standards for material changes to permits; §15.4 (relating to Dune Protection Standards) to incorporate additional minimization requirements for adverse impacts to dunes and dune vegetation and to modify mitigation or compensation deadlines; §15.5 (relating to Beachfront Construction Standards) to provide clarification and consistency; §15.6 (relating to concurrent Dune Protection and Beachfront Construction Standards) to allow impervious surfaces for certain parking areas or walkways, modify construction standards to dune walkovers related to width, height, deck board spacing, and to increase access for persons with disabilities; §15.7 (relating to Local Government Management of the Public Beach) to require a stable, slip-resistant surface to the approximate high tide line or require an alternate means of access for persons with disabilities in certain circumstances; §15.8 (relating to Beach User Fees) to expand the required information for a new or amended beach user fee proposal; and §15.9 (relating to Penalties and Remedial Orders) to clarify notice of violation and hearing requirements. Amendments to §15.10 (relating to General Provisions), §15.11 (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach), §15.12 (relating to Temporary Orders Issued by the Land Commissioner), and §15.13 (relating to Disaster Recovery Orders) provide clarification and consistency with the rest of Chapter 15 and with Texas Natural Resources Code (TNRC) Chapter 61, the Open Beaches Act, and with Chapter 63, the Dune Protection Act.

References to the Attorney General have been removed throughout the chapter to reflect current statutory authority under TNRC Chapters 61 and 63, "state" was changed to "General Land Office" where appropriate, and changes were made to ensure consistency throughout the chapter and with TNRC Chapters 61 and 63. Clarifying language and supporting citations were added and duplicative language was removed.

The terms mean high tide and mean high water were replaced with coastal public land, where appropriate, since the terms can be ambiguous and to ensure consistency with TNRC Chapter 33, Management of Coastal Public Land. References to fax numbers were also removed because it is no longer a prevalent form of communication.

BACKGROUND AND SECTION BY SECTION ANALYSIS OF THE PROPOSED AMENDMENTS

§15.1 Policy

The GLO proposes to add new §15.1(11) to include the GLO's policy and goals related to minimizing public expenditure on erosion and storm damage losses to public and private property in rule, in accordance with TNRC Ch. 33.

§15.2 Definitions

Throughout this subchapter, the addition of supporting citations and clarifying language was proposed for multiple definitions,

and duplicative language was removed. For example, language regarding the local government's role in determining consistency of proposed construction with their dune protection and beach access plan was removed from the definition of "beachfront construction certificate or certificate" in renumbered §15.2(8) because the requirement is already in §15.3(s)(8).

The GLO also proposes to remove the definitions for "all-terrain vehicle" and "recreational off-highway vehicle" from §§15.2(2) and (62) and add a definition for "off-highway vehicle" to renumbered §15.2(52), which encompasses both all-terrain vehicles and recreational off-highway vehicles, for consistency with the Transportation Code.

The modification of the definition of "beach maintenance" in renumbered §15.2(9) is proposed to clarify that the redistribution of seaweed on the beachfront is considered a beach maintenance activity. Redistribution of seaweed to ensure that the public can use and access the beach is a common beach maintenance activity, and the inclusion in the definition clarifies that this type of activity is subject to the requirements regarding beach maintenance activities in 31 TAC Chapter 15 and local government plans.

GLO proposes to add new §15.2(17) to define "coastal public land" as having the meaning assigned by TNRC §33.004 to be consistent with TNRC Ch. 33.

GLO proposes to modify the definition of "construction" in §15.2(19) to include the removal or demolition of a structure and to clarify that alteration of land is considered a construction activity. Language was also added to clarify that fencing that may adversely affect public access, dunes or dune vegetation is considered a construction activity. These additions clarify that these are activities that are considered construction and for which a permit or certificate is required since they have the potential to adversely affect public beach access or critical dunes and dune vegetation.

GLO proposes to remove the 21-day camping duration limit from the definition of "recreational activity" in renumbered §15.2(63) to allow each local government to establish a permissible duration of camping.

In order to clarify the use of the term "restoration" when used in reference to violations and subsequent remedial actions, the GLO proposes to expand the definition of "restoration" in renumbered §15.2(65) to include the restoration of a site to a condition that is compliant with applicable requirements in TNRC Chapters 61 and 63, 31 TAC Chapter 15, and a local government plan, including removal or abatement of unauthorized construction or structures. Previously, this definition only referred to the restoration of dunes or dune vegetation. The amended definition encompasses its use in the context of resolving a violation.

§15.3 Administration

References to TNRC Ch. 33 and erosion response plans are proposed in multiple places to clarify that erosion response plans are subject to the same requirements as local government beach access and dune protection plans. GLO also proposes to delete §15.3(b)(4) regarding individual requests for line of vegetation (LOV) determinations since conducting a LOV determination at the time of the construction application saves costs and achieves the same goals. Also, a LOV determination can often be done without a site visit.

GLO proposes to modify renumbered §15.3(o)(4) to formalize the requirement that plan amendment submissions include the governing body's formal approval of changes, a description of the changes, and a version of the plan identifying all proposed changes. This information was previously informally requested by the GLO and submitted by local governments since it is needed for the GLO to determine if proposed plan amendments are consistent with state law. GLO also proposes to add language to renumbered §15.3(o)(5) requiring local governments that submit a proposed plan amendment that includes a variance to provide a reasoned justification and a clear demonstration of how the variance is equal to or more protective of the goals and policies contained in §15.1.

GLO proposes to add new §15.3(q)(2) clarifying that the Open Beaches Act applies to state and national park and wildlife management areas located on islands or peninsulas, regardless of whether the park is accessible by public road or ferry, as provided for in TNRC §61.0211.

GLO proposes to add new §15.3(s)(4) stating that no person shall violate TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit issued pursuant to Chapter 15. This addition clarifies that any unauthorized activities or activities that are not compliant with TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit are subject to enforcement action.

GLO proposes to add language to renumbered §§15.3(s)(5)(A)(viii) and 15.3(s)(5)(B)(vi) requiring that design plans and elevation views for any proposed walkways or dune walkovers be included in an application since this information is needed to determine consistency with new rules relating to height and width of dune walkovers in §15.6 and elsewhere in this chapter. GLO proposes to add a requirement for construction applications to renumbered §15.3(s)(5)(A)(x) for photographs of dunes immediately adjacent to the site since dunes are a connected system that often cross property boundaries and measures may need to be taken to avoid or mitigate for damages to dunes on adjacent properties. GLO also proposes to include "survey" in renumbered §§15.3(s)(5)(A)(xv) and 15.3(s)(5)(B)(viii) as a type of map that may be submitted with a permit application.

GLO proposes to add language to §15.3(t)(1) clarifying that permits and certificates are valid for no more than three years from the date of original issuance unless additional time has been provided by a renewal. New §15.3(t)(2)(A-D) was created using language from §15.3(t)(1) to clarify that permits and certificates are only renewable prior to the expiration of the permit and certificate, and may be renewed only if there are no material changes to the site or the proposed activities. Permittees must provide a statement describing the absence of or any changes to the site, project plans, or other original information as part of a renewal request.

In §15.3(t)(4), language has been proposed that specifies that it is the local government that has the authority void a permit under various circumstances. The language in renumbered §15.3(t)(5) was modified to clarify that an applicant or permittee must either amend or obtain a new permit or certificate in the event of a material change to the site conditions or proposed construction activities, and to clarify that the local government must submit the amendment or new permit to the GLO for review and comment.

GLO proposes to add new §15.3(u)(1)(A) to clarify that a permit, certificate, or other relevant authorization is part of the administrative record, and §15.3(u)(1)(B) is proposed to clarify that any

information submitted as part of a permit renewal or amendment is part of the administrative record. Renumbered §15.3(u)(1)(D) is being proposed to clarify that all correspondence sent or received by the local government regarding the permit or certificate is also part of the administrative record.

In §15.3(u)(2), GLO proposes to change the mandatory retention time of the administrative record by a local government from three years from the date of a final decision on a permit or certificate to four years from the expiration date of a permit or certificate or from the date that the required mitigation or compensation has been determined to be complete, whichever is later. This change to the retention record timeframe is necessary to include the entire three-year deadline that is required for mitigation and compensation to be completed.

§15.4 Dune Protection Standards

The GLO proposes to add language to §15.4(a) stating that no person shall initiate or perform construction in violation of TNRC §§ 63.051, 63.091, or this chapter to further support the regulatory prohibitions in the Dune Protection Act. This addition clarifies that any unauthorized activities or activities that are not compliant with TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit are subject to enforcement action.

The GLO proposes to create new §15.4(f)(2)(B)(iii) to highlight that local governments may use their planning and development authority to limit private access points to the beach to only the minimum number needed to service the development. Although there is an existing requirement in renumbered §15.4(f)(2)(iv), some local governments have concerns over implementing this provision if private access pathways are already platted. This addition highlights that local governments can use other existing authorities to minimize the proliferation of excessive private access in the initial planning stages of a development when approving proposed plats to protect public infrastructure and private property from storm surge and further minimize potential adverse impacts to dunes and dune vegetation.

GLO also proposes to create new §15.4(f)(2)(B)(vi) to prohibit the construction or maintenance of a structure on previously mitigated or compensated dunes that are seaward of a dune protection line except for permitted dune walkovers or similar access ways. This addition clarifies that existing requirements in §15.7(e)(8) also apply to mitigated or compensated dunes and is intended to protect less robust artificial or man-made dunes from being weakened, and to limit the extent of recurring damages to dunes and dune vegetation.

The proposed amendments include the addition of the term "mitigation" to all areas where "compensation" is mentioned, and vice versa, in §§15.4(g)(1 - 5), since this section describes the deadlines for both mitigation and compensation. GLO also proposes to add "in accordance with the mitigation or compensation plan" to §15.4(g)(1) to clarify that permittees must provide local governments with proof of financial responsibility for mitigation or compensation costs if mitigation or compensation is not completed in accordance with the mitigation or compensation plan prior to the commencement of construction of any structure. This addition clarifies that a permittee must provide the local government with proof of financial responsibility for mitigation costs if the sand placement and dune vegetation planting components of the required mitigation or compensation are not completed in adherence to the mitigation plan before construction of any structure begins.

GLO also proposes to add a requirement to §15.4(g)(5) for permittees to complete sand placement, and if applicable, dune vegetation relocation and/or planting portions of a mitigation plan within one year of initiation of construction. The deadline by which mitigation or compensation must be complete has also been changed to three years after the initiation of construction instead of three years after beginning compensation. Under the existing mitigation and compensation deadline requirements, some permitted construction projects did not begin the required mitigation or compensation until years after construction was initiated, which leaves an inadequate amount of time for the planted vegetation to become established by the three-year completion deadline and allowed for an unnecessary and extended period of time where public infrastructure and private property were at greater risk to storm damage. By requiring a one-year deadline for sand movement and vegetation planting after the initiation of construction and changing the mitigation or compensation deadline to three years after the initiation of construction, the GLO is encouraging prompt restoration of the protective capacity of the dune system after impacts occur, which minimizes the risk of damage to natural resources from floods and erosion. The inclusion of a one-year deadline for vegetation planting will also help permittees meet the three-year mitigation or compensation deadline since planted vegetation needs time to become established and for the vegetative cover to match the surrounding natural dunes, as required in §15.4(g)(3).

§15.5 Beachfront Construction Standards

GLO proposes to create new §15.5(a)(2), stating that no person shall initiate or perform construction in violation of TNRC §61.013 or this chapter, to further support the regulatory prohibitions in the Open Beaches Act. Non-substantive changes were also made to §15.5(b)(3) to ensure consistency throughout the chapter.

§15.6 Concurrent Dune Protection and Beachfront Construction Standards

GLO proposes to add new §15.6(g), which would allow for the construction of certain parking areas or walkways landward of the line of vegetation to enhance ease of access for persons with disabilities, as required by law. For commercial facilities or public beach access facilities that are required to be accessible for persons with disabilities, a change was made to allow concrete slabs or other impervious surfaces so long as the area does not exceed 5% of the square footage of the property to be used for parking areas or walkways, when the use of permeable materials is not practicable. A demonstration of necessity must be provided by the applicant. There are many instances where commercial facilities or public beach access facilities are required to be accessible for persons with disabilities under other laws and regulations, and this addition provides more flexibility in complying with those standards.

To ensure dune walkovers or similar structures are constructed in a manner that is protective of the critical dune area and to minimize the amount of building materials in the dune system that may end up as debris on the public beach, GLO proposes to add various construction requirements for dune walkovers and similar structures to new §15.6(i). The requirement for dune walkovers to be constructed to allow for the growth of dune vegetation and migration of dunes was relocated to this section from §15.7(g), and specific requirements for maximum width limitations, minimum height above the dunes, and deck board spacing were added. Over many years, the GLO observed that dune vegetation is not able to grow as densely, or at all, beneath dune

walkovers with an increased width, relatively low height above the dune system or inadequate deck board spacing. Additional requirements by which dune walkovers can be constructed to allow for the growth of dune vegetation and migration of dunes will limit the weakening of the dune system and risk to public and private property, while still allowing for walkovers of adequate size for public and private beach access.

GLO also proposes to add new §15.6(i)(3) requiring local governments to construct dune walkovers that are accessible for persons with disabilities, where practicable, for all new construction of public dune walkovers in areas where vehicles are prohibited from the public beach. This addition is intended to enhance public beach access opportunities for persons with disabilities and ensure equal access to the beach, as already required under other laws and regulations.

The new requirements in §§15.6(i)(1 - 3) would apply to all new construction of dune walkovers and similar structures after the date of adoption of the rules and any major repairs to existing dune walkovers and similar structures. A few examples of major repairs to existing dune walkovers that would be subject to the new provisions include widening and replacing a substantial portion of the deck boards or replacing some pilings. If there is a conflict between the new dune walkover requirements in §§15.6(i)(1 - 3) and the requirements in a local government's Beach Access and Dune Protection Plan, then the more protective requirements will apply.

§15.7 Local Government Management of the Public Beach

The proposed amendments include modifications to §15.7(e)(6)(B) authorizing local governments to allow sand fencing that is discontinuous and temporary to restore dunes and recommending that the fencing conform to the guidelines in the most recent edition of the GLO's Dune Protection and Improvement Manual for the Texas Gulf Coast. This change was made after a review of best dune restoration practices along the Texas coast and in recognition of the benefits of discontinuous sand fencing to nesting sea turtles.

The requirements for local governments to require permittees to shorten dune walkovers after a major storm and for local governments to assess the status of the public beach boundary after a major storm or other event causing significant landward migration of the public beach was removed from §§15.7(g)(4)(A) - (B) to be consistent with TNRC Ch. 61. In an effort to give the beach time to recover naturally, dune walkovers are typically not shortened immediately after a major storm unless they are impacting the public's ability to use the beach, and the language was modified accordingly.

A proposed modification to §15.7(h) requires prior approval from the GLO before a local government modifies public beach parking. Additionally, the requirement for the GLO to approve and certify a local government's beach access and use standards was moved from §15.7(h)(1)(C) to §15.7(h), and language was added to clarify that any modification to a local government's beach access and use plan must be approved and certified by the GLO based on the GLO's affirmative finding that such modifications preserve or enhance the public's right to use and access the beach.

Proposed language for §15.7(h)(4) would clarify that local governments must notify the GLO of any emergency beach access point closures as soon as practicable if a local government has had to make a closure for an emergency related to public safety. Historically the GLO has not always been promptly notified by local governments of emergency beach closures, and this addition will ensure timely communication and coordination between a local government and the GLO.

GLO proposes to add new §§15.7(h)(5)(A)(i - ii) requiring at least one access way with a stable, slip-resistant surface to the approximate high tide line to be provided in each jurisdiction where vehicles are prohibited from driving to mean high tide, and signs identifying the accessible beach access route to be conspicuously posted at the landward terminus of the access route. If a local government can demonstrate that providing and maintaining a stable, slip-resistant surface to the approximate high tide line is not practicable, local governments will be required to provide an alternate means of access for persons with disabilities, such as beach wheelchairs. Local governments will have until December 31, 2023, to come into compliance with these provisions. These changes are proposed in order to enhance public beach access for persons with disabilities and are modeled after the United States Access Board accessibility standards for federal outdoor developed areas, which are currently the only federal accessibility standards with specific guidelines for beach access routes.

GLO also clarified that golf carts must be prohibited in areas where vehicles are prohibited from driving on and along the beach in §15.7(h)(5)(B) unless they have a valid disabled parking placard and are transporting a person with a physical disability or a veteran with disabilities.

GLO also proposes to create new §15.7(l) using language from §15.7(i)(4)(E) requiring a local government to prepare a compliance plan if the GLO determines that existing beach access or proposed changes to vehicular controls are not consistent with state standards. The compliance plan must include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements.

§15.8 Beach User Fees

Proposed amendments to §15.8 include reformatting and language additions for clarity. GLO also proposes to expand the list of information that must be included in a new or amended beach user fee plan proposal in §15.8(b) to include information that is needed for the GLO to be able to determine consistency with state law and regulations. For example, the GLO proposes to add §15.8(b)(7) requiring an estimate of the projected beach user fee revenues and expected budget for expenditures on beach-related services, including a description of how the projections and budget were determined, for the next five years, which is needed for the GLO to determine if the proposed beach user fee is reasonable, would recover the cost of providing and maintaining beach-related services, and would not exceed the necessary and actual cost of providing beach-related services, as required by this subchapter.

The GLO also proposes to add §15.8(b)(6) requiring a report detailing a local government's previous five years of beach user fee revenue and expenditures on beach-related services; §15.8(b)(10) requiring a description of how the beach user fee will be collected and managed by the local government and an explanation of how the method of fee collection and management is consistent with the requirements of this chapter; §15.8(b)(11) requiring where appropriate, evidence of the cost to the local government of providing existing beach-related services and how the proposed beach user fee will maintain or enhance those or additional beach-related services; and

§15.8(b)(12) for any additional information required for the GLO to determine if the fee is reasonable. Detailed historical revenue and expenditure information is needed so the GLO can ensure that a proposed price increase in beach user fees (BUFs) is appropriately determined and review previous local government management of these funds for efficiency and effectiveness in providing beach-related services to the public. Obtaining detailed information on the cost of providing existing beach-related services and how a new BUF or a BUF increase will enhance those services is critical to the GLO's responsibility to ensure that BUFs are reasonable. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services but does not exceed the necessary and actual cost of providing reasonable beach-related public facilities and services. Much of this information has been informally requested by the GLO during the plan amendment process since a high level of detail is needed to determine consistency with existing regulations and state law. In addition, administrative costs must be directly related to providing support for beach related services. Examples of administrative costs were added.

GLO also proposes to add new §15.8(g)(2), requiring documentation sufficient to substantiate the proper collection and expenditure of beach user fees to be maintained by the local government and for such documentation to be kept by the local government for four years following the date the fees are spent. This information must be provided to the GLO within ten working days of a request by the GLO to the local government. In addition, language is being proposed in renumbered §15.8(h) allowing beach user fee revenues to be separately tracked in local governments' accounting systems as an alternative to being maintained in entirely separate revenue accounts. GLO proposes new §15.8(i) using language previously in §15.13(f) stating that the GLO shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent section of a dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related services.

§15.9 Penalties and Remedial Orders

GLO proposes to create new §15.9(b)(3) to clarify that a person damages a dune or dune vegetation when their conduct results in the destruction or removal of a dune or dune vegetation or weakens a dune or dune vegetation by increasing the potential for flood damage, washovers or blowouts, by changing runoff or drainage patterns in a way that aggravates erosion on or off the site or in a way that may result in adverse effects to dune hydrology and dune complexes or dune vegetation. This addition incorporates the prohibition of the approval by local governments of permits that materially weaken dunes or dune vegetation, as required in this chapter, and clarifies the circumstances under which a person who damages a dune or dune vegetation may be subject to the administrative penalties and restoration requirements in this section.

GLO proposes to change §15.9(b)(5) to state that a person must apply for a permit and complete restoration rather than just initiate restoration of damages in order to avoid further costs, fees or enforcement proceedings as described in this section. New §15.9(d) was created to outline the notice of violation and hearing requirements, using updated language partially relocated from §§15.9(b)(3), 15.9(b)(6)(B), and 15.9(c)(6)(B).

§15.10 General Provisions

The GLO proposes to delete §15.10(j) regarding grandfathered plans since it applied to the initial beach dune rules and is no longer relevant. Minor editorial changes and changes for clarification were also made in this subchapter.

§15.11 Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach

Minor editorial changes to clarify language and be consistent with the rest of this chapter are proposed. Modifications to §15.11(e) are also proposed to clarify that a local government shall coordinate with property owners to remove personal property and beach debris related to a structure from the public beach and dune complex. Language was added to authorize local governments to require debris removal from the public beach when the debris is a public health and safety hazard as a condition of the issuance of a new certificate or permit under this section.

§15.12 Temporary Orders Issued by the Land Commissioner

Minor editorial changes to clarify language and for consistency with the rest of this chapter and with TNRC Chapter 61 are proposed. Specifically, the GLO proposes to amend §15.12(d)(2) to clarify that the GLO is responsible for clearing debris from the public beach in accordance with TNRC §61.067, and that while an order issued under this section is in effect, a local government with the duty to clean and maintain the beach must coordinate with the GLO and, where appropriate, littoral property owners, to remove beach debris from the public beach. Previously, this section stated that the local government must coordinate with the littoral property owners to remove beach debris from the public beach and did not include reference to the GLO or the GLO's responsibility for clearing debris from the public beach after declared disaster.

§15.13 Disaster Recovery Orders

The GLO is proposing minor editorial changes to clarify language and for consistency with the rest of this chapter and TNRC Chapter 61. GLO also proposes to relocate language, from §15.13(b) to §15.13(c), stating that temporary standards authorized by this section are effective for a period of two years from the date of the issuance of disaster recovery order by the commissioner, unless a shorter period of recovery is specified in the order. GLO proposes to change §15.13(h)(2) to require the removal of a clay core dune if it is not covered with a minimum of 24 inches of sand. The requirement for local governments to require the use of indigenous dune vegetation when restoring dunes is being relocated from §15.13(e)(10) to new §15.13(h)(4) and modified to clarify that indigenous dune vegetation is only required when vegetation is used to restore dunes.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Melissa Porter, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government as a result of enforcing or administering the amended rule.

Ms. Porter has determined that there will be a limited fiscal impact on local governments as they come into compliance with the proposed amended sections. There will be intermittent and continued costs associated with the local governments' implementation of the requirement to provide at least one access way with a stable, slip-resistant surface from the dry beach to the approximate high tide line or an alternate means of access for persons with disabilities in areas where vehicles are prohibited from driving to the water line. The cost of implementing this provision is hard to determine and will vary on a case-by-case basis

depending on the type and number of mats needed to provide access from the dry beach to the high tide line. Based on estimates from local governments that are already providing these accessibility devices, purchasing stable, slip-resistant mats has cost between $12,300 and $42,000, with new vehicular mats costing more than used or non-vehicular mats. The cost of labor to maintain the stable, slip-resistant mats will depend on maintenance frequency, which may change based on the wind, storm events, and the amount of dry versus wet sand, and was estimated by one local government as approximately $675 per month per access way. Alternatively, beach wheelchairs (Mobi-chairs) are approximately $2,500 each and are an acceptable alternate means of access for persons with disabilities where stable, slip-resistant mats are not feasible. The GLO Coastal Management Program will provide stable, slip-resistant mats and/or beach wheelchairs to almost all local governments based on the requests of each jurisdiction, so the cost of compliance for each local government for each year for the first five years the amended section, as proposed, is in effect will be limited to the costs for maintenance and, if necessary, replacement of the stable, slip-resistant mats and/or beach wheelchairs. In addition, the paying for these items is an allowed use of beach user fees, which most local governments collect.

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

Ms. Melissa Porter, Deputy Director for the GLO's Coastal Resources Division, has evaluated this proposed amendment and determined that the proposed rulemaking action will not create an economic effect on small or micro-businesses or rural communities.

GLO has determined that the proposed rulemaking will have no adverse local employment impacts and that no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that for the first five years they are in effect the public will benefit from the proposed amendments because they better facilitate public beach access for persons with disabilities and reduce the risk of storm surge and flood damage to public infrastructure and private property.

The proposed amendments include a requirement for a stable, slip resistant mat to the approximate high tide line or an alternate means of access for persons with disabilities to be provided in areas where vehicles are prohibited from driving to the water and for all new public walkovers in areas where vehicles are prohibited from driving on the beach to be constructed to be accessible for persons with disabilities, both of which will provide enhanced beach access opportunities for persons with disabilities and ensure equal access to the beach. The amendments also include an allowance for a limited use of impervious cover for parking areas and walkways for commercial or public beach access facilities to enhance ease of access for persons with disabilities as required by law.

The proposed amendments also include the addition of width limitations and height requirements for dune walkovers, which will ensure that walkovers are constructed in a manner that is protective of the critical dune area, will minimize the amount of material in the dune system that may end up as debris on the public beach, thereby reducing potential future public expenditures, and limit the risk to public and private property by allowing for a more continuous dune system.

The proposed amendments include a change to the mitigation or compensation deadline to three years after the initiation construction and the addition of a one-year deadline for sand movement and vegetation planting, which will encourage prompt restoration of the protective capacity of the dune system after impacts occur and minimize the risk of damage to natural resources and from flood and erosion damage.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code § 2001.0225 and determined that the action is not subject to § 2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "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. The proposed amendments are not anticipated to 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.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. For the first five years the amendments will be in effect, the proposed rulemaking 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 the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the GLO. The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

The proposed amendments create a new regulation that requires enhanced beach access accommodations for persons with disabilities. The proposed rulemaking also would change regulations to allow for the use of concrete in some areas where it was not previously allowed to improve access for persons with disabilities, as required by law.

During the first five years that the rule amendments would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The amendments are expected to improve environmental protection and safety and to reduce public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life and to augment beach access for persons with disabilities.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code § 2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§ 17 and 19 of the Texas Constitution.

The GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP) as provided for in the Texas Natural Resources Code §33.2053, and 31 TAC §29.11(a)(1)(J) and §29.11(c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations and has determined that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §26.12 (relating to Goals) and §26.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §26.12(5). These goals seek to balance the benefits of economic development and multiple human uses, the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §26.12(5) as they provide local governments with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone. The proposed rules are also consistent with CMP policies in 31 TAC §26.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register, Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §61.011, which provides authority for the Commissioner to promulgate rules for the protection of the public easement from erosion or reduction and §63.121, which provides for the commissioner's authority to adopt rules for the protection of critical dune areas.

Texas Natural Resources Code §§61.011 – 61.026 and §§63.001 – 63.1814 are affected by the proposed amendments.

§15.1. Policy.

The General Land Office has identified the following goals as a basis for managing and regulating human impacts on the beach/dune system:

(1) - (10) (No change.)

(11) to minimize public expenditure on damages caused on public and private property, including the public beach, by erosion, storms, and meteorological events.

§15.2. Definitions.

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

(1) Affect--As used in this subchapter regarding dunes, dune vegetation, and the public beach, "affect" means to produce an effect upon dunes, dune vegetation, or public beach use and access.

[~~(2) All-terrain vehicle--Has the meaning assigned by §502.001, Transportation Code.~~]

(2) [~~(3)~~] Amenities--Any nonhabitable major structure including but not limited to swimming pools, decks, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, artificial runoff channels and other water retention structures, sidewalks, roads, streets, highways, parking areas and other paved areas (exceeding 144 square feet in area), underground storage tanks, and similar structures.

(3) [~~(4)~~] Applicant--Any person applying to a local government for a permit and/or certificate for any construction or development plan.

(4) [~~(5)~~] Backdunes--The dunes located landward of the foredune ridge which are usually well vegetated but may also be unvegetated and migratory. These dunes supply sediment to the beach after the foredunes and the foredune ridge have been destroyed by natural or human activities.

(5) [~~(6)~~] Beach access--The right to use and enjoy the public beach, including the right of free and unrestricted ingress and egress to and from the public beach.

(6) [~~(7)~~] Beach/Dune Rules-- 31 TAC §§15.1 - 15.36, 31 TAC Ch. 25, 31 TAC §26.26 and 31 TAC §29.60. [~~31 TAC §§15.1 - 15.12.~~]

(7) [~~(8)~~] Beach/dune system--The land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

(8) [~~(9)~~] Beachfront construction certificate or certificate--The document issued by a local government that certifies that the proposed construction either is consistent with the local government's dune protection and beach access plan. [~~or is inconsistent with the local government's dune protection and beach access plan. In the latter case, the local government must specify how the construction is inconsistent with the plan, as required by the Open Beaches Act, §61.015~~]

(9) [~~(10)~~] Beach maintenance--The cleaning or removal of debris from the beach or redistribution of seaweed on the beachfront by handpicking, raking, or mechanical means.

(10) [~~(11)~~] Beach profile--The shape and elevation of the beach as determined by surveying a cross section of the beach.

(11) [~~(12)~~] Beach-related services--Reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.

(12) [~~(13)~~] Beach user fee--A fee collected by a local government in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public.

(13) [~~(14)~~] Blowout--A breach in the dunes caused by wind erosion.

(14) [~~(15)~~] Breach--A break or gap in the continuity of a dune caused by wind or water.

(15) [~~(16)~~] Bulkhead--A structure or partition built to retain or prevent the sliding of land. A secondary purpose is to protect the upland against damage from wave action.

(16) [~~(17)~~] Coastal and shore protection project--A project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach nourishment, sediment bypassing, construction of man-made vegetated mounds, and dune revegetation.

(17) Coastal public land--Has the meaning assigned by Texas Natural Resource Code, §33.004.

(18) Commercial facility--Any structure used for providing, distributing, and selling goods or services in commerce including, but not limited to, hotels, restaurants, bars, rental operations, and rental properties.

(19) Construction--Causing or carrying out any building, bulkheading, filling, clearing, excavation, or substantial improvement to or alteration of land or the size of any [~~structure.~~] structure, or removal or demolition of a structure. "Building" includes, but is not limited to, all related site work and placement of construction materials on the site. "Filling" includes, but is not limited to, disposal of dredged materials. "Excavation" includes, but is not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. "Substantial improvements to or alteration of land or the size of any structure" include, but are not limited to, creation of vehicular or pedestrian trails, landscape work and fencing (that may adversely affect public access, [~~affects~~] dunes or dune vegetation), and increasing the size of any structure.

(20) Coppice mounds--The initial stages of dune growth formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach seaward of the foredunes. Coppice mounds may be unvegetated.

(21) Critical dune areas--Those portions of the beach/dune system as designated by the General Land Office that are located within 1,000 feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas include, but are not limited to, the dunes that store sand in the beach/dune system to replenish eroding public beaches.

(22) Cumulative impact--The effect on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(23) Dedication--Includes, but is not limited to, a restrictive covenant, permanent easement, and fee simple donation.

(24) Dune--An emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be created via man-made vegetated mounds. Natural dunes are usually found adjacent to the uppermost limit of wave action and are usually marked by an abrupt change in slope landward of the dry beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, backdunes, and man-made vegetated mounds.

(25) Dune complex or dune area--Any emergent area adjacent to the waters of the Gulf of Mexico in which several types of dunes are found or in which dunes have been established by proper management of the area. In some portions of the Texas coast, dune complexes contain depressions known as swales.

(26) Dune Protection Act--Texas Natural Resources Code, §§63.001, et seq.

(27) Dune protection and beach access plan or plan--A local government's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and for preserving and enhancing use of and access to and from public beaches, and for reducing public expenditures for erosion and storm damage losses, as required by Texas Natural Resources Code Chapters 61 and 63 and Texas Natural Resources Code §33.607. [~~the Dune Protection Act and the Open Beaches Act.~~]

(28) Dune protection line--A line established by a county commissioners court or the governing body of a municipality for the purpose of preserving, at a minimum, all critical dune areas identified by the General Land Office pursuant to the Dune Protection Act, §63.011, and §15.3(f) of this title (relating to Administration). A municipality is not authorized to establish a dune protection line unless the authority to do so has been delegated to the municipality by the county in which the municipality is located. Such lines will be located no farther than 1,000 feet landward of the mean high tide of the Gulf of Mexico.

(29) Dune protection permit or permit--The document issued by a local government to authorize construction or other regulated activities in a specified location seaward of a dune protection line or within a critical dune area, as provided in the Texas Natural Resources Code, §63.051.

(30) Dune vegetation--Flora indigenous to natural dune complexes, and growing on naturally-formed dunes or man-made vegetated mounds on the Texas coast and can include coastal grasses and herbaceous and woody plants.

(31) Effect or effects--"Effects" include: direct effects--those impacts on public beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and occur at the same time and place; and indirect effects--those impacts on beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and are later in time or farther removed in distance than a direct effect, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems. "Effects" and "impacts" as used in this subchapter are synonymous. "Effects" may be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

(32) Eroding area--A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on published data of the University of Texas at Austin, Bureau of Economic Geology. Local governments may establish an "eroding area boundary" in beach/dune plans; this boundary shall be whichever distance landward of the line of vegetation is greater: 200 feet, or the distance determined by multiplying 50 years by the annual historical erosion rate (based on the most recent data published by the University of Texas at Austin, Bureau of Economic Geology).

(33) Erosion--The wearing away of land or the removal of beach and/or dune sediments by wave action, tidal currents, wave currents, drainage, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

(34) Erosion response structure--A hard or rigid structure built for shoreline stabilization which includes, but is not limited to, a jetty, groin, breakwater, bulkhead, seawall, riprap, rubble mound, revetment, or the foundation of a structure which is the functional equivalent of these specified structures.

(35) FEMA--The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program and publishes the official flood insurance rate maps.

(36) Fibercrete--Unreinforced concrete, consisting of a combination of pulped paper, or other cellulose-based raw material, and binders such as lime, cement, and/or clay.

(37) [~~(36)~~] Foredunes--The first clearly distinguishable, usually vegetated, stabilized large dunes encountered landward of the Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be large and continuous, foredunes are typically hummocky and discontinuous and may be interrupted by breaches and washover areas. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

(38) [~~(37)~~] Foredune ridge--The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

(39) [~~(38)~~] Habitable structure [~~perimeter or~~] footprint--The area of a lot covered by a structure used or usable for habitation. The habitable structure [~~perimeter or~~] footprint does not include uncovered stairs and decks, incidental projecting eaves, balconies, ground-level paving, landscaping, open recreational facilities (for example, pools and tennis courts), or other similar features.

(40) [~~(39)~~] Habitable structures--Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and commercial facilities. [~~buildings for commercial purposes.~~] Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches or [~~porches,~~] gazebos, and other attached improvements.

(41) [~~(40)~~] Industrial facilities--Include, but are not limited to, those establishments listed in Part 1, Division D, Major Groups 20 - 39 and Part 1, Division E, Major Group 49 of the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.). However, for the purposes of this subchapter, the establishments listed in Part 1, Division D, Major Group 20, Industry Group Number 209, Industry Numbers 2091 and 2092 are not considered "industrial facilities." These establishments are listed in "Appendix I" attached to this section.
Figure: 31 TAC §15.2(41)
[~~Figure: 31 TAC §15.2(40)~~]

(42) [~~(41)~~] Large-scale construction--Construction activity greater than 5,000 square feet or habitable structures greater than two stories in height. Both the area beneath the lowest habitable level of an elevated structure and a cupola (i.e. "widow's walk") with an area of 400 square feet or less on the top of the second habitable story are not considered stories for the purpose of this section. Multiple-family habitable structures are typical of this type of construction.

(43) [~~(42)~~] Line of vegetation--The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach.

(44) [~~(43)~~] Local government--A municipality, county, any special purpose district, any unit of government, or any other political subdivision of the state.

(45) [~~(44)~~] Man-made vegetated mound--A mound, hill, or ridge of sand created by the deliberate placement of sand or sand trapping devices including sand fences, trees, or brush and planted with dune vegetation.

(46) [~~(45)~~] Master plan--A plan developed by the applicant in consultation with the General Land Office, [~~the Office of the Attorney General,~~] the applicant or applicants, and the local government, for the development of an area subject to the beach/dune rules, as identified in §15.3 of this title (relating to Administration). The master plan shall fully describe in narrative form the proposed development and all proposed land and water uses, and shall include maps, drawings, and tables, and other information, as needed. The master plan must, at a minimum, fully describe the general geology and geography of the site, land and water use intensities, size and location of all buildings, structures, and improvements, all vehicular and pedestrian access ways, and parking or storage facilities, location and design of utility systems, location and design of any erosion response structures, retaining walls, or stormwater treatment management systems, and the schedule for all construction activities described in the master plan. The master plan shall comply with the Open Beaches Act and the Dune Protection Act. The master plan shall provide for overall compliance with the beach/dune rules, but may vary from the specific standards, means and methods provided in the beach/dune rules if the degree of dune protection and the public's right to safe and healthy use of and access to and from the public beach are preserved. If all impacts to dunes, dune vegetation and public beach use and access are accurately identified, local governments shall not require permits or certificates for construction on the individual lots within the master plan area. Master plans are intended to provide a comprehensive option for planning along the Texas coast.

(47) [~~(46)~~] Material changes--Changes in project design, construction materials, or construction methods or in the condition of the construction site which occur after an application is submitted to a local government or after the local government issues a permit or certificate. Material changes are those additional or unanticipated changes which may have caused or may [~~will~~] cause adverse effects on dunes, dune vegetation, or beach access and use, or exacerbation of erosion on or adjacent to the construction site.

(48) [~~(47)~~] Meteorological Event--Atmospheric conditions or phenomena resulting in avulsion, erosion, accretion, or other impacts to the shoreline that alter the location of the line of vegetation.

(49) [~~(48)~~] Mitigation sequence--The series of steps which must be taken if dunes and dune vegetation will be adversely affected. First, such adverse effects shall be avoided. Second, adverse effects shall be minimized. Third, the dunes and dune vegetation adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

(50) [~~(49)~~] National Flood Insurance Act--42 United States Code, §§4001, et seq.

(51) [~~(50)~~] Natural resources--Land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

(52) Off-highway vehicle--Has the meaning assigned by §551A.001, Transportation Code.

(53) [~~(51)~~] Open Beaches Act--Texas Natural Resources Code, §§61.001, et seq.

(54) [~~(52)~~] Owner or operator--Any person owning, operating, or responsible for operating commercial or industrial facilities.

(55) [~~(53)~~] Permit or certificate condition--A requirement or restriction in a permit or certificate necessary to assure protection of life, natural resources, property, and adequate beach use and access rights [~~(consistent with the Dune Protection Act)~~] which a permittee must satisfy in order to be in compliance with the permit or certificate.

(56) [~~(54)~~] Permittee--Any person authorized to act under a permit or a certificate issued by a local government.

(57) [~~(55)~~] Person--An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

(58) [~~(56)~~] Pipeline--A tube or system of tubes used for the transportation of oil, gas, chemicals, fuels, water, sewerage, or other liquid, semi-liquid, or gaseous substances.

(59) [~~(57)~~] Practicable--In determining what is practicable, local governments shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Local governments shall also consider the cost of the technology or technique.

(60) [~~(58)~~] Production and gathering facilities--The equipment used to recover and move oil or gas from a well to a main pipeline, or other point of delivery such as a tank battery, and to place such oil or gas into marketable condition. Included are pipelines used as gathering lines, pumps, tanks, separators, compressors, and associated equipment and roads.

(61) [~~(59)~~] Project area--The portion of a site or sites which will be affected by proposed construction.

(62) [~~(60)~~] Public beach--As used in this subchapter, "public beach" is defined in the Texas Natural Resources Code, §61.013(c).

(63) (61) Recreational activity--Includes, but is not limited to, hiking, sunbathing, and camping [~~for less than 21 days.~~]. As used in §15.3(s)(2)(C) of this title (relating to Administration), recreational activities are limited to the private activities of the person owning the land and the social guests of the owner. Operation of recreational vehicles is not considered a recreational activity, whether private or public.

[~~(62) Recreational off-highway vehicle--Has the same meaning assigned by §502.001, Transportation Code.~~]

(64) [~~(63)~~] Recreational vehicle--A dune buggy, marsh buggy, minibike, trail bike, jeep, off-highway vehicle as defined by §551A.001, Transportation Code, [~~all terrain vehicle, recreational off-highway vehicle,~~] or any other mechanized vehicle used for recreational [~~purposes.~~] purposes, but does not include a vehicle that is not being used for recreational purposes.

(65) [~~(64)~~] Restoration--Repair or replacement of dunes or dune [~~vegetation.~~] vegetation, or restoring a site to compliance with applicable requirements, including removal or abatement of unauthorized construction or structures, as those terms defined in this section.

(66) [~~(65)~~] Retaining wall--A structure designed to contain or which primarily contains material or prevents the sliding of land. Retaining walls may collapse under the forces of normal wave activity.

(67) [~~(66)~~] Sand budget--The amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

(68) [~~(67)~~] Seawall--An erosion response structure specifically designed to or which will withstand wave forces.

(69) [~~(68)~~] Seaward of a dune protection line--The area between a dune protection line and the line of mean high tide.

(70) [~~(69)~~] Small-scale construction--Construction activity less than or equal to 5,000 square feet or habitable structures less than or equal to two stories in height. Both the area beneath the lowest habitable level of an elevated structure and a cupola (i.e. "widow's walk") with an area of 400 square feet or less on the top of the second habitable story are not considered stories for the purpose of this section. Single-family habitable structures are typical of this type of construction.

(71) [~~(70)~~] Structure--Includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

(72) [~~(71)~~] Swales--Low areas within a dune complex located in some portions of the Texas coast which function as natural rainwater collection areas and are an integral part of the dune complex.

(73) [~~(72)~~] Unique flora and fauna--Endangered or threatened plant or animal species listed pursuant to 16 United States Code Annotated, §1531 et seq., the Endangered Species Act of 1973, and/or the Parks and Wildlife Code, Chapter 68, or any plant or animal species that a local government has determined in their local beach/dune plan are rare or uncommon.

(74) [~~(73)~~] Washover areas--Low areas that are adjacent to beaches and are inundated by waves and storm tides from the Gulf of Mexico. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or breached by storm tides and wind erosion.

§15.3. Administration.

(a) Integration of dune protection and beach access programs. The Dune Protection Act and the Open Beaches Act require certain local governments to adopt and implement programs for the preservation of dunes and the preservation and enhancement of use of and access to and from public beaches. These Acts provide for regulation of generally the same activities and the same geographic areas, and their requirements are scientifically and legally related. Local governments required to adopt dune protection and beach access programs shall in-

tegrate them into a single plan consisting of procedural and substantive requirements for management of the beach/dune system within their jurisdiction. The authority to integrate such plans is provided pursuant to the Dune Protection Act, the Open Beaches Act, and this subchapter. The local government plans shall be consistent with the requirements of the Open Beaches Act, the Dune Protection Act, and this subchapter, and each shall, whenever possible, incorporate the local government's ordinary land use planning procedures.

(b) Boundary of the public beach. The public beach is defined in the Open Beaches Act, §61.013(c), and §15.2 of this title (relating to Definitions). The line of vegetation is defined in the Open Beaches Act, §61.001(5), and §15.2 of this title (relating to Definitions). The line of vegetation is typically used to determine the landward extent of the public beach. However, there are portions of the Texas coast where there is no marked vegetation line or the line is discontinuous or modified. In those portions of the coast, the line of vegetation shall be determined consistent with §15.10(b) of this title (relating to General Provisions) and the Open Beaches Act, §61.016 and §61.017.

(1) If there is no clearly marked line of vegetation, the "line of vegetation" delineating the public beach shall be the line of constant elevation connecting two clearly marked lines of vegetation of equal elevation on each side, but if there are no clearly marked lines of vegetation on each side, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

(2) If there is no clearly marked line of vegetation, the "line of vegetation" delineating the public beach shall be the line of average elevation connecting two clearly marked lines of vegetation of unequal elevation on each side, but if there are no clearly marked lines of vegetation on each side, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

(3) If the vegetation line has been obliterated or is created artificially and there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to the public easement.

~~[(4) An individual seeking line of vegetation determination for a proposed purchase of property or for proposed construction must initially file a request with the local government having authority for Beachfront Construction Certificates/Dune Protection Permits. After review by the local government, the request and initial determination by the local government must be forwarded to the General Land Office for review and approval.]~~

(4) [~~(5)~~] If the commissioner has issued an order under §15.12 of this title (relating to Temporary Orders Issued by the Land Commissioner) or §15.13 of this title (relating to Disaster Recovery Orders) the line of vegetation shall be delineated in accordance with the order(s). [~~order(s) and an initial determination by the local government is not required.~~]

(5) [~~(6)~~] When a Beachfront Construction Certificate/Dune Protection Permit application is submitted to the General Land Office for review and comment, the line of vegetation depicted on any map, aerial photograph, or other documentation shall be subject to verification by the General Land Office.

(6) [~~(7)~~] The determination of the location of the line of vegetation by the commissioner of the General Land Office as provided by the Open Beaches Act, §§61.016 - 61.017 and 61.0171, constitutes prima facie evidence of the landward boundary of the area subject to the public easement until a court adjudication establishes the line in another place.

(c) Beachfront construction certification areas. The General Land Office has the responsibility of protecting the public's right to use and have access to and from the public beach and of providing standards to the local governments certifying construction on land adjacent to the Gulf of Mexico consistent with such public rights. The Open Beaches Act, §61.011(d)(6), limits the geographic scope of the beachfront construction certification area to the land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or the area up to 1,000 feet of mean high tide, whichever distance is greater. For this area, local governments shall prepare a beach access and use program, pursuant to the Open Beaches Act, §61.015, for inclusion in their dune protection and beach access plans to control any adverse effects of beachfront construction on public beach use and access. Applications for beachfront construction certificates shall be reviewed by local governments for consistency with their dune protection and beach access plans.

(d) Critical dune areas and dune protection lines. The commissioner of the General Land Office, as trustee of the public lands of Texas, has the responsibility to identify and protect Texas' critical dune areas that are essential to the protection of coastal public land, public roads, public beaches, and other public resources. Local governments have the responsibility to establish dune protection lines for the purpose of preserving sand dunes within their jurisdiction. The Dune Protection Act, §63.121 and §63.012, respectively, limits the geographic scope of critical dune areas and the location of the dune protection line to that portion of the beach within 1,000 feet of mean high tide of the Gulf of Mexico.

(e) Identification of critical dune areas. Pursuant to the authority provided in the Dune Protection Act, §63.121, the General Land Office has identified critical dune areas as all dunes and dune complexes located within 1,000 feet of mean high tide of the Gulf of Mexico. This identification is based on the determination that all of the various protective functions served by the dunes and dune complexes located within that 1,000 feet are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas are related to dune protection lines in that local governments are required to establish such lines for the purpose of preserving dunes in a location landward of all critical dune areas. Criteria for establishing dune protection lines shall, at a minimum, include the criteria for establishing critical dune areas in this subsection.

(f) Establishment of dune protection lines. Pursuant to the authority provided in the Dune Protection Act, §63.011, local governments shall establish and maintain dune protection lines which preserve, at a minimum, the dunes within the critical dune areas as defined in this subchapter. The establishment of the line should include the protection of critical dune areas from erosion caused by natural forces and development on adjacent land. Accordingly, the Dune Protection Line should be established in a location that will allow local governments to implement Texas Natural Resources Code, §33.607. A local government must conduct a field inspection to determine the approximate location of the line unless it proposes to establish or relocate its line at a distance of 1,000 feet of mean high tide of the Gulf of Mexico, as that 1,000 feet is the maximum extent of the local government's jurisdiction for establishing dune protection lines.

(g) Deadline for establishment of dune protection lines. Local governments shall establish dune protection lines as part of the dune protection component of their local plans. The local plans shall be submitted to the state no later than 180 days after the effective date of this subchapter. Therefore, local governments shall establish dune

protection lines no later than 180 days after this subchapter goes into effect.

(h) Information required regarding dune protection lines. Local governments are required to submit the following information to the General Land Office to allow state evaluation of the adequacy of the dune protection line location: a map or drawing of the line; a written description of the line; or a written description and a map or drawing. This information shall be included in the local government's dune protection and beach access plan and must clearly designate for the public and the state the location of the line and the location of dunes seaward of the line. All maps, drawings, or descriptions shall incorporate sufficient elements of the Texas State Plane Coordinate System to enable such description to be located on the ground and shall be tied to and/or include the Texas State Plane Coordinates for two or more monumented points along any described boundary. Each local government shall file a map or drawing or description of its dune protection line with the clerk of the county or municipality establishing the line.

(i) State assistance in the establishment of local government dune protection lines. The General Land Office may assist and advise local governments in establishing or modifying a dune protection line. Pursuant to the Dune Protection Act, §63.013, local governments shall notify the General Land Office of the establishment of dune protection lines and any subsequent change in a line. Upon such notification, the General Land Office shall review the location of the line by examining the map or description of the line submitted to the state and by conducting field inspections, as necessary. The General Land Office will review the location of the line to determine whether the line meets the geographic standard of being located landward of all critical dune areas. If the General Land Office is satisfied that the line meets that geographic standard, the General Land Office will notify the local government of this finding in writing. If the line does not meet that geographic standard, the General Land Office will assist and advise the local government in adjusting the line.

(j) State review of dune protection line location. Each local government shall submit the information regarding the location of the dune protection line, as required in subsection (h) of this section, to the General Land Office as part of its dune protection and beach access plan. In determining whether to approve the local plan, the General Land Office will review the various components of the plan, including the adequacy of the location of a local government's dune protection line (with respect to the protection of critical dune areas), based on the geographic standards provided in subsection (i) of this section.

(k) Local government review of dune protection line location. Each local government shall review its dune protection line every five years to determine whether the line is adequately located to achieve the purpose of preserving critical dune areas. In addition to the five-year review, each local government shall review the adequacy of the location of the line within 90 days after a tropical storm or hurricane affects the portion of the coast in its jurisdiction.

(l) Provisions for public hearings on dune protection lines. Local governments shall provide notice of a public hearing to consider establishing or modifying a dune protection line by publishing such notice at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing. Notice shall be given to the General Land Office not less than one week nor more than three weeks before the hearing. In the notice to the General Land Office, local governments shall also include the information described in subsection (h) of this section.

(m) Local government authority. Local governments shall include in the plans submitted to the General Land Office citations of all statutes, policies, and ordinances which demonstrate the authority of the local government to implement and enforce the plan in a manner consistent with the requirements of this subchapter. Local government plans shall also demonstrate the coordination, on the local level, of the dune protection, beach access, erosion response, and flood protection programs (if participating in the National Flood Insurance Program under the National Flood Insurance Act). Each local government shall integrate these programs into one plan for the management of the beach/dune system within its jurisdiction. [~~The General Land Office will provide written guidance on the form and content of the plan upon written request by a local government.~~]

(n) Content of local government dune protection and beach access plans. Local government plans shall contain procedural mechanisms and substantive requirements necessary for compliance with this subchapter, the Dune Protection Act, [~~and~~] the Open Beaches [~~Act.~~] Act and Texas Natural Resources Code §33.607. Local governments shall attach copies of this subchapter, the Dune Protection Act, and the Open Beaches Act to their plans, and their plans shall state that these state laws are incorporated into the plans. A local government shall also state in its plan that any person in violation of the incorporated state laws is in violation of its local plan.

(o) Consultation on and submission [~~Submission~~] of local government plans to the General Land Office. Local governments shall submit dune protection plans, [~~and~~] beach access [~~plans~~] plans, erosion response plans under Texas Natural Resources Code Chapter 33 and 31 TAC §15.17, and any amendments to those plans to the General Land Office for review, comment, and certification as to compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act.

(1) A local government's governing body must formally approve the plan or amendments to the plan prior to submission to the General Land Office for certification. [~~state agencies.~~] Prior to formally approving its plan, a local government may consult with or request legal and technical advice from the General Land Office on [~~for assistance in~~] meeting the requirements for state agency approval. The General Land Office will provide written guidance on the form and content of the plan or amendment prior to formal approval upon request by a local government.

(2) Review of plan and amendments. The General Land Office shall either grant or deny certification of a local government's formally approved dune protection and beach access plan or any amendments within 90 days of receipt of the plan.

(A) Depending upon the degree or complexity of modifications contained in the plan amendment, the local government may request a review period shorter than 90 days based on the following guidelines:

(i) An expedited review [~~Expedited Review~~] period of 30 days may be requested for review of a plan amendment that is administrative in nature and does not contain variances nor substantially alter beach access or dune protection.

(ii) A standard review [~~Standard Review~~] period of 60 days may be requested for review of a plan amendment that does not contain any changes to beach user fees, beach access points, changes to vehicular access, nor substantially alter beach access or dune protection.

(iii) The local government shall provide a reasoned justification with any request for a review period of less than 90 days. It must include a detailed description of the proposed changes that will result from the amendment.

(iv) The General Land Office will make a determination on the eligibility of an amendment for a shortened review period and notify the local government of the determination within ten working days (to run concurrently with the applicable review period) from the date the request and complete package of information regarding the proposed amendment is received. Review of plan amendments that do not qualify for a shortened review period will be completed by the General Land Office within the allowed 90 day period.

(B) In the event of denial, the General Land Office shall send the plan back to the local government with a statement of specific objections and the reasons for denial of certification, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan for review.

~~[(3) The General Land Office shall use the same procedure for reviewing revised or amended plans as the procedure used for reviewing the plan originally submitted.]~~

(3) [~~(4)~~] The General Land Office's certification of local government plans shall be by adoption into the rules authorized under the Texas Natural Resources Code, §61.011. The rules adopted by the General Land Office to certify plans will consist of state approval of the plans, but the text of plans will not be adopted by the General Land Office.

(4) [~~(5)~~] A [~~Subsequent to initial certification,~~] local government [~~governments~~] may adopt a new or amend their dune protection and beach access plan [~~plans~~] by submitting the plans or proposed changes to the General Land Office for review, comment, and certification. A request for approval of a plan or any amendments to a plan must include the governing body's formal approval, a description of all major proposed changes, and a version of the plan identifying all proposed changes.

(5) [~~(6)~~] A local government may request General Land Office certification of a plan or a plan amendment that includes a variance regarding any requirement or prohibition of this [~~chapter.~~] chapter; however, the local government must include in writing a reasoned justification and clearly demonstrate to the General Land Office and public how the variance is equal to or more protective of the goals and policies contained in §15.1 of this title

(p) Submission deadline for dune protection and beach access plans. Local governments shall submit dune protection and beach access plans to the General Land Office no later than 180 days from the effective date of this subchapter. If the General Land Office does not approve a plan, the local government shall submit revisions of the plan until the plan is approved. However, any local government that submits a revised plan that has not been modified to address the state comments regarding the statutory requirements and the minimum standards identified in this subchapter is presumed to be in violation of this subchapter, the Open Beaches Act, and the Dune Protection Act. Local governments that fail to submit plans within 180 days of the effective date of this subchapter will be liable for penalties as provided in §15.9 of this title (relating to Penalties). Further, local governments that fail to submit plans by that deadline will not be authorized to permit construction within the geographic scope of this subchapter.

(q) Compliance with the Open Beaches Act and exemptions from local government plan requirements. [~~Areas exempt from local government plans. Local government dune protection and beach access plans shall not include the following areas, which are exempt from regulation by local governments:~~]

(1) Local government dune protection and beach access plans shall not include the following areas, which are exempt from regulation by local governments:

(A) [~~(1)~~] national park areas, national wildlife refuges, or other designated national natural areas;

(B) [~~(2)~~] state park areas, state wildlife refuges, or other designated state natural areas; and

(C) [~~(3)~~] beaches on islands and peninsulas not accessible by public road or ferry facility for as long as that condition exists.

(2) The Open Beaches Act applies to state and national park and wildlife management areas located on islands or peninsulas, regardless of whether the park is accessible by public road or ferry, as provided for in Texas Natural Resources Code, §61.0211.

(r) State-owned or public land not exempt from local government plans. Local government plans shall apply to all state-owned or public land other than parks and refuges, as provided for in Texas Natural Resources Code, §61.022 and §63.015, subject to the provisions of the Texas Natural Resources Code, §§31.161and 31.167. [~~, et seq.~~]

(s) Acts prohibited without a dune protection permit or beachfront construction certificate. An activity requiring a dune protection permit may typically also require a beachfront construction certificate and vice versa. Local governments shall, whenever possible, issue permits and certificates concurrently when an activity requires both. In their dune protection and beach access plans, local governments may combine the dune protection permit and the beachfront construction certificate into a single permit or a two-part permit; however, they are not required to do so.

(1) Acts prohibited without a dune protection permit. Unless a dune protection permit is properly issued by a local government authorizing the conduct, no person shall:

(A) damage, destroy, or remove a sand dune or a portion of a sand dune seaward of a dune protection line or within a critical dune area; or

(B) kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

(2) Activities exempt from dune protection permit requirements. Pursuant to the Dune Protection Act, §63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act. Where local governments have separate authority to regulate the following activities, persons [~~permittees~~] shall comply with the local laws as well. The activities exempt from the dune protection permit requirements are:

(A) exploration for and production of oil and gas and reasonable and necessary activities directly related to such exploration and production, including construction and maintenance of production and gathering facilities located in a critical dune area which serve wells located outside of a critical dune area, provided that such facilities are located no farther than two miles from the well being served;

(B) grazing livestock and reasonable and necessary activities directly related to grazing; and

(C) recreational activities as defined in §15.2 of this title other than operation of a recreational vehicle.

(3) Acts prohibited without a beachfront construction certificate. No person shall cause, engage in, or allow construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public use of and access to and from public beaches unless the construction

is properly certified by the appropriate local government as consistent with its local plan, this subchapter, and the Open Beaches Act.

(4) No person shall violate Texas Natural Resources Code Chapter 61 and 63, these rules, the requirements of a local government plan, or the terms of a certificate or permit issued pursuant to this chapter.

(5) [~~(4)~~] Dune protection permit and beachfront construction certificate application requirements. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate. Local governments may require more information, but they shall require that applicants for dune protection permits and beachfront construction certificates provide, at a minimum, the following items and information.

(A) Dune protection permit application requirements for large- and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, electronic mail address [~~fax number~~] of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) a description of the proposed structures, the number of structures, and whether the structures are amenities or habitable structures;

(iv) the number of parking spaces;

(v) the approximate percentage of existing and finished open spaces (those areas completely free of structures);

(vi) the floor plan and elevation view of the structure proposed to be constructed or expanded;

(vii) the approximate duration of the construction;

(viii) a description (including location) of any existing dune walkovers and walkways, and design plans and elevation views for any [~~or~~] proposed walkways or dune walkovers on the tract;

(ix) a grading and layout plan identifying all existing and proposed elevations (in reference to the National Oceanic and Atmospheric Administration datum), existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade;

(x) current color photographs of the site which clearly show the current location of the vegetation line and the existing dunes on and immediately adjacent to the tract;

(xi) a description of the effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology;

(xii) a comprehensive mitigation plan which conforms with the requirements in §15.4 of this title (relating to Dune Protection Standards) and §15.7 of this title (relating to Local Government Management of the Public Beach) which, at a minimum, includes a detailed description of the methods which will be used to avoid, minimize, mitigate and/or compensate for any adverse effects on dunes or dune vegetation;

(xiii) where a mitigation plan is required, the contact information for all landowners immediately adjacent to the tract and affirmation by the applicant that the adjacent landowners will be provided with notice of the hearing at least 10 days prior to the hearing on the application;

(xiv) proof of the applicant's financial capability acceptable to the local government to mitigate or compensate for adverse effects on dunes and dune vegetation;

(xv) an accurate map, site plan, survey, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the dune protection line, the line of vegetation, proposed and existing structures, and the project area of the proposed construction on the tract;

(IV) proposed roadways and driveways and proposed landscaping activities on the tract;

(V) the location of any retaining walls, seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line; and

(VI) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(B) Certificate application requirements for large-and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, electronic mail address [~~fax number~~] of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) a description of the proposed structures, the number of structures, and whether the structures are amenities or habitable structures;

(iv) a statement written by the applicant affirming that the construction, the completed structure, and use of or access to and from the structure will not adversely affect the public beach or public beach access ways or exacerbate erosion;

(v) the approximate duration of the construction;

(vi) a description (including location) of any existing dune walkovers and walkways, and design plans and elevation views for any [~~or~~] proposed walkways or dune walkovers on the tract;

(vii) current color photographs of the site which clearly show the current location of the vegetation line and any dunes on the tract which are seaward of the dune protection line;

(viii) an accurate map, site plan, survey, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the proposed construction and the distance between the proposed construction and mean high tide, the line of vegetation, the dune protection line, and the landward limit of the beachfront construction area;

(IV) the location of proposed and existing structures, and the size (in acres or square feet) of the proposed project area;

(V) proposed roadways and driveways;

(VI) proposed landscaping activities within 200 feet of the line of vegetation, including the installation of fencing; [~~vegetation;~~] and

(VII) the location of any retaining walls, seawalls, or erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line.

(C) Permit and certificate applications for large-scale construction. For all proposed large-scale construction, local governments shall require applicants to submit the following additional items and information:

(i) if the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, a certified copy of the recorded plat of the subdivision, or, if not a recorded subdivision, a plat of the subdivision certified by a licensed surveyor, (if the area is located within an un-platted tract, a survey will suffice) and a statement of the total area of the subdivision in acres or square feet;

(ii) in the case of multiple-unit dwellings, the number of units proposed;

(iii) alternatives to the proposed location of construction on the tract or to the proposed methods of construction which would cause fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access; and

(iv) the proposed activity's impact on the natural drainage pattern of the site and the adjacent lots.

(D) Submission of readily available information with permit and certificate applications. For all proposed construction (large and small-scale), if applicants already have the following items and information, local governments shall require them to be submitted in addition to the other information required:

(i) the most recent local historical erosion rate data (as determined by the University of Texas at Austin, Bureau of Economic Geology) and the activity's potential impact on coastal erosion; and

(ii) a copy of the FEMA "Elevation Certificate."

(E) Submission of information by local governments. For all proposed construction (large and small-scale), local governments shall provide to the General Land Office [~~state~~] the following information:

(i) a copy of the community's most recent flood insurance rate map identifying the site of the proposed construction;

(ii) a preliminary determination as to whether the proposed construction complies with all aspects of the local government's dune protection and beach access plan;

(iii) the activity's potential impact on the community's natural flood protection and protection from storm surge;

(iv) a description as to how the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly, the dune protection and beach access plan's provisions relating to public beach ingress/egress, off-beach parking, and avoidance of reduction in the size of the public beach due to erosion; and

(v) copies of aerial photographs of the proposed construction site with a delineation of the footprint of the proposed construction. [~~construction, if the local government has aerial photographs of the area in which construction is proposed.~~]

(F) Dissemination of erosion data and other technical information. For all proposed construction (large and small-scale), the General Land Office shall be the state contact for erosion rate data questions and supply available technical information to a local government, upon request.

(6) [~~(5)~~] Master plan. Local governments may adopt separate ordinances or county commissioners court orders authorizing master plans located within the geographic scope of this subchapter. These ordinances and orders shall be consistent with and address the dune protection and beach access requirements of this subchapter, the Dune Protection Act and Open Beaches Act. The ordinances and orders shall be submitted to the General Land Office for review and approval to ensure consistency with this subchapter. When considering approval of a master planned development or construction plans and setting conditions for operations under such plans, local governments shall consider:

(A) the plan's potential effects on dunes, dune vegetation, public beach use and access, and the applicant's proposal to mitigate for such effects throughout the construction;

(B) the contents of the master planned development; and

(C) whether any component of the master plan, such as installation of roads or utilities, or construction of structures in critical dune areas or seaward of a dune protection line, will subsequently require a dune protection permit or a beachfront construction certificate. If a dune protection permit or beachfront construction certificate will be necessary, the local government shall require the developer to apply for the permit and/or certificate as part of the master plan approval process. This requirement only applies if the local government is authorizing activities impacting critical dune areas and public beach use and access under its dune protection and beach access plan.

(7) [~~(6)~~] General Land Office comments.

(A) A person proposing to conduct an activity for which a permit or certificate is required shall submit a complete application to the appropriate local government. The local government shall forward the complete application, [~~notice of public hearing, and~~] any associated [~~material~~] material, and where applicable, notice of public hearing to the General Land Office. The application, hearing notice, any documents associated with the application, and information as to when the decision will be made must be received by the General Land Office no later than ten working days for small scale construction and 30 working days for large scale construction before the date of the local government's public hearing on the application or when the local government is first scheduled to act on the permit or certificate. A local government may act on such applications following the public hearing or a decision by the commissioner's court or municipal governing body if the General Land Office received the application within the proper time frame and the General Land Office [~~state~~] provides comments or does not submit comments on the application to the local government.

(B) The General Land Office may submit comments on the proposed activity to the local government. The review period for comments of ten working days for small scale construction and 30 working days for large scale construction is initiated only after the re-

ceipt by the General Land Office of all information required by this section.

(8) [~~(7)~~] Local government review. When determining whether to approve a proposed activity, a local government shall review and consider:

(A) the permit or certificate application;

(B) the proposed activity's consistency with this subchapter and the local government's dune protection and beach access plan, including the dune protection and beachfront construction standards contained in both;

(C) any other law relevant to dune protection and public beach use and access which affects the activity under review;

(D) the comments of the General Land Office; and

(E) any other information the local government may consider useful to determine consistency with the local government's dune protection and beach access plan, including resource information made available to them by federal and state natural resource entities and landowners immediately adjacent to the tract. A local government shall not issue a dune protection permit or beachfront construction certificate that is inconsistent with its plan, this subchapter, and other state, local, and federal laws related to the requirements of the Dune Protection Act and Open Beaches Act.

(t) Term, amendment, [~~Term~~] and renewal of permits and certificates.

(1) A local government's dune protection permits or beachfront construction certificates shall be valid for no more than three years from the date of original issuance, unless additional time has been provided by a renewal.

(2) Prior to the expiration of a certificate or permit, a local government may renew a dune protection permit or beachfront construction certificate allowing proposed construction to continue if there are no material changes to the site or proposed activities and the activity in the application for renewal meets the applicable state and local standards.

(A) As part of a renewal request, the permittee shall supplement the information provided in the original permit or certificate application materials with a statement describing the absence of or any changes to the site, project plans, or any other original information provided by the permittee.

(B) For the purpose of maintaining administrative records, local governments shall keep all original application and renewal materials submitted by any applicant as provided in subsection (u) of this section.

(C) Each renewal of a permit and certificate allowing construction shall be valid for no more than 90 days.

(D) A local government shall issue only two renewals for each permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate.

[~~(1) A local government's dune protection permits or beachfront construction certificates shall be valid for no more than three years from the date of issuance. A local government may renew a dune protection permit or beachfront construction certificate allowing proposed construction to continue if the activity as proposed in the application for renewal meets the applicable state and local standards and the permittee supplements the information provided in the original permit or certificate application materials with additional information indicating any changes to the original information provided by the permittee. For the purpose of maintaining administrative records for permits, certificates, and renewals, if any, local governments are required to keep all original application materials submitted by any applicant for three years, as provided in subsection (u) of this section. Each renewal of a permit and certificate allowing construction shall be valid for no more than 90 days. A local government shall issue only two renewals for each permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate. In addition, local governments shall require a permittee to apply for a new permit or a certificate if the proposed construction is changed in any manner which causes or increases adverse effects on dunes, dune vegetation, and public beach use and access within the geographic scope of this subchapter.~~]

(3) [~~(2)~~] Local governments that choose to authorize master plans may adopt a different term limit for permits and certificates only if the master plans are authorized under a separate, General Land Office-approved [~~state-approved~~] ordinance or county commissioner's court order. Each master plan will be deemed to be a new local ordinance or county commissioners court order subject to state approval regarding effects on dunes, dune vegetation, and public beach use and access.

(4) [~~(3)~~] Any dune protection permit or beachfront construction certificate allowing beachfront construction issued by a local government pursuant to its dune protection and beach access plan shall be voidable by the local government under the following circumstances.

(A) The permit or certificate is inconsistent with this subchapter or the local government's plan at the time the permit or certificate was issued.

(B) A material change occurs after the permit or certificate is issued.

(C) A permittee fails to disclose any material fact in the application.

(5) In the event of a material change to the site conditions or the proposed construction since approval of the original application, a local government shall require that an applicant or permittee amend an application for a permit or certificate, or obtain a new permit or certificate. All information relevant to the material changes, such as site conditions, project plans, and required changes to mitigation or compensation, must be disclosed by the applicant or permittee to the local government. The local government will submit the amended application for a permit or certificate or new application to the General Land Office for review and comment.

[~~(4) A local government shall require that a permittee apply for a new permit or certificate in the event of any material changes. A local government shall require that an applicant modify an application disclosing all information relevant to the material changes, if such changes occur before the local government issues the permit or certificate.~~]

(6) [~~(5)~~] A permit or certificate automatically terminates in the event the certified construction comes to lie within the boundaries of the public beach by artificial means or by action of storm, wind, water, or other naturally influenced causes. Nothing in the certificate shall be construed to authorize the construction, repair, or maintenance of any construction within the boundaries of the public beach at any time.

(u) Administrative record.

(1) Local governments shall compile and maintain an administrative record which demonstrates the basis for each final decision

made regarding the issuance of a dune protection permit or beachfront construction certificate. The administrative record shall include copies of the following:

(A) the permit, certificate, and any other relevant authorization that was issued in response to the application or in connection with the permit or certificate issued;

(B) [~~(A)~~] all materials the local government received from the applicant as part of or regarding the permit or certificate application or any association renewal or amendment; [~~application;~~]

(C) [~~(B)~~] the transcripts, if any, or the minutes and recordings [~~and/or tape~~] of the local government's meeting during which a final decision regarding the permit or certificate was made; and

(D) [~~(C)~~] all comments and other correspondence sent or received by the local government regarding the permit or certificate.

(2) Local governments shall keep the administrative record for a minimum of four years from the expiration date of a permit or certificate.

(A) Local governments shall send to the General Land Office upon request a copy of those portions of the administrative record that were not originally sent to the General Land Office for permit or certificate application review and comment. The record must be received by the General Land Office no later than ten working days after the local government receives the request.

(B) The General Land Office shall notify the appropriate permittee of the request for a copy of the administrative record from the local government. Upon request of the permittee, a local government shall provide to the permittee copies of any materials in the administrative record regarding the permit or certificate which were not submitted to the local government by the permittee (i.e., the permit application) or given to the permittee by the local government (i.e., the permit).

[~~(2) Local governments shall keep the administrative record for a minimum of three years from the date of a final decision on a permit or certificate. Local governments shall send to the General Land Office upon request a copy of those portions of the administrative record that were not originally sent to the General Land Office for permit or certificate application review and comment. The record must be received by the General Land Office no later than ten working days after the local government receives the request. The General Land Office shall notify the appropriate permittee of the request for a copy of the administrative record from the local government. Upon request of the permittee, a local government shall provide to the permittee copies of any materials in the administrative record regarding the permit or certificate which were not submitted to the local government by the permittee (i.e., the permit application) or given to the permittee by the local government (i.e., the permit).~~]

§15.4. Dune Protection Standards.

(a) Dune protection required. This section provides the standards and procedures local governments shall follow in issuing, denying, or conditioning dune protection permits. A local government shall protect dunes and dune vegetation from adverse effects resulting directly or indirectly from construction in a critical dune area or seaward of its dune protection line, as cumulatively required by the Dune Protection Act, this subchapter, and that local government's dune protection and beach access plan. No person shall initiate or perform construction in violation of TNRC §§63.051, 63.091 or this chapter.

(b) Procedures for local government permit determinations and permit issuance. Before issuing a dune protection permit, a local government shall make the following determinations.

(1) The proposed activity is not a prohibited activity as defined in subsection (c) of this section, §15.5 of this title (relating to Beachfront Construction Standards), or §15.6 of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(2) The proposed activity will not materially weaken dunes or materially damage dune vegetation based on the application of technical standards resulting in substantive findings under subsection (d) of this section.

(3) There are no practicable alternatives to the proposed activity and the impacts cannot be avoided as provided in subsection (f)(1) of this section.

(4) The applicant's mitigation plan will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects, as provided in subsections (f)(2) - (5) of this section and the applicant has affirmatively demonstrated the ability to mitigate adverse effects on dunes and dune vegetation.

(5) Where mitigation is required, that the applicant has provided landowners immediately adjacent to the tract with notice of the hearing at least 10 days prior to the hearing on the application.

(c) Prohibited activities. A local government shall not issue a permit or certificate authorizing the following actions within critical dune areas or seaward of that local government's dune protection line:

(1) activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:

(A) moving sand to a location landward of the critical dune area or dune protection line; and

(B) temporarily or permanently moving sand off the site, except for purposes of permitted mitigation, compensation, or an approved dune restoration or beach nourishment project and then only from areas where the historical accretion rate is greater than two feet per year, and the project does not cause any adverse effects on the sediment budget;

(2) depositing sand, soil, sediment, or dredged spoil which contains the hazardous substances listed in Volume 40 of the Code of Federal Regulations, Part 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;

(3) depositing sand, soil, sediment, or dredged spoil which is of an unacceptable mineralogy or grain size when compared to the sediments found on the site (this prohibition does not apply to materials related to the installation or maintenance of public beach access roads running generally perpendicular to the public beach)

(4) creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits;

(5) constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of this subchapter;

(6) operating recreational vehicles on a sand dune [~~vehicles~~];

(7) mining dunes;

(8) constructing concrete slabs or other impervious surfaces within 200 feet landward of the line of vegetation. Local governments may authorize construction of a concrete slab or other impervious surface beneath a habitable structure elevated on pilings provided the slab will not extend beyond the footprint [~~perimeter~~] of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the footprint [~~perimeter~~] of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. The use of permeable materials such as brick pavers, limestone, or gravel is recommended for drives or parking areas;

(9) depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction;

(10) constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields; and

(11) detonating bombs or explosives.

(d) Technical standards for local government determination as to material weakening of dunes and material damage of dune vegetation within a critical dune area or seaward of a dune protection line. A local government may approve a permit application only if it finds as a fact, after a full investigation, that the particular conduct proposed will not materially weaken any dune or materially damage dune vegetation or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water. In making the finding as to whether such material weakening or material damage will occur, a local government shall use the following technical standards. Failure to meet any one of these standards will result in a finding of material weakening or material damage and the local government shall not approve the application for the construction as proposed.

(1) The activity shall not result in the potential for increased flood damage to the proposed construction site or adjacent property.

(2) The activity shall not result in runoff or drainage patterns that aggravate erosion on or off the site.

(3) The activity shall not result in significant changes to dune hydrology.

(4) The activity shall not disturb unique flora or fauna or result in adverse effects on dune complexes or dune vegetation.

(5) The activity shall not significantly increase the potential for washovers or blowouts to occur.

(e) Local government considerations when determining whether to issue a dune protection permit. Local governments shall consider the following items and information when determining whether to grant a permit:

(1) all comments submitted to the local government by the General Land Office;

(2) cumulative impacts and indirect effects of the proposed construction on all dunes and dune vegetation within critical dune areas or seaward of a dune protection line;

(3) cumulative impacts and indirect effects of other activities on dunes and dune vegetation located on the proposed construction site;

(4) the pre-construction type, height, width, slope, volume, and continuity of the dunes, the pre-construction condition of the dunes, the type of dune vegetation, and percent of vegetative cover on the site;

(5) the most recent historical erosion rate as determined by the University of Texas at Austin, Bureau of Economic Geology, and whether the proposed construction may alter dunes and dune vegetation in a manner that may aggravate erosion;

(6) the applicant's mitigation plan for any unavoidable adverse effects on dunes and dune vegetation and the effectiveness, feasibility, and desirability of any proposed dune reconstruction and revegetation;

(7) the impacts on the natural drainage patterns of the site and adjacent property;

(8) any significant environmental features of the potentially affected dunes and dune vegetation such as their value and function as floral or faunal habitat or any other benefits the dunes and dune vegetation provide to other natural resources;

(9) wind and storm patterns including a history of washover patterns;

(10) location of the site on the flood insurance rate map; and

(11) success rates of dune stabilization projects in the area.

(f) Mitigation. The mitigation sequence shall be used by local governments in determining whether to issue a permit, after the determination that no material weakening of dunes or material damage to dunes or dune vegetation will occur within critical dune areas or seaward of the dune protection line. The mitigation sequence consists of the following steps: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; and compensating for the impact by replacing resources lost or damaged. If, for any reason, an applicant cannot demonstrate the ability to mitigate adverse effects on dunes and dune vegetation, the local government is not authorized to issue the permit. A local government shall require a permittee to use the mitigation sequence, as provided in this subsection, as a permit condition if that local government finds that an activity will result in any adverse effects on dunes or dune vegetation seaward of a dune protection line or on critical dune areas and add a permit condition that the applicant will mitigate for the adverse effects in accordance with the mitigation plan. When a mitigation plan is required, the applicant must provide landowners immediately adjacent to the tract with notice of the hearing on the permit at least 10 days prior to the hearing. Such notice to adjacent landowners may be made by sending a copy of the hearing notice by certified mail to the adjacent property owner's address listed in the county central appraisal district records.

(1) Avoidance. Avoidance means avoiding the effect on dunes and dune vegetation altogether by not taking a certain action or parts of an action. Local governments shall require permittees to avoid adverse effects on dunes and dune vegetation. Local governments shall not issue a permit allowing any adverse effects on dunes and dune vegetation located in critical dune areas or seaward of the dune protection line unless the applicant proves there is no practicable alternative to the proposed activity, proposed site or proposed methods for conducting the activity, and the activity will not materially weaken the dunes or dune vegetation. Local governments shall require applicants to include information as to practicable alternatives in the permit application. Local governments shall review the permit application to determine whether the applicant has considered all practicable alterna-

tives and whether one of the practicable alternatives would cause no adverse effects on dunes and dune vegetation than the proposed activity. Local governments shall require applicants to employ construction methods which will have no adverse effects, unless the applicant can demonstrate that the use of such methods is not practicable. Local governments shall require that permittees undertaking construction in critical dune areas or seaward of a dune protection line use the following avoidance techniques.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those subject to the exemption in §15.3(s)(2)(A) of this title (relating to Administration). Local governments shall not allow permittees to construct nonexempt pipelines within critical dune areas or seaward of a dune protection line unless there is no practicable alternative.

(B) Location of construction and beach access. Local governments shall require permittees proposing construction seaward of dune protection lines and within critical dune areas to locate all such construction as far landward of dunes as practicable. Local governments shall not restrict construction which provides access to and from the public beach pursuant to this provision.

(C) Location of roads. Local governments shall require permittees constructing roads parallel to beaches to locate the roads as far landward of critical dune areas as practicable and shall not allow permittees to locate such roads within 200 feet landward of the line of vegetation.

(D) Artificial runoff channels. Local governments shall not permit construction of new artificial channels, including stormwater runoff channels, unless there is no practicable alternative.

(2) Minimization. Minimization means minimizing effects on dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. Local governments shall require that applicants minimize adverse impacts to dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If an applicant for a dune protection permit demonstrates to the local government that adverse effects on dunes or dune vegetation cannot be avoided and the activity will not materially weaken dunes and dune vegetation, the local government may issue a permit allowing the proposed alteration, provided that the permit contains a condition requiring the permittees to minimize adverse effects on dunes or dune vegetation to the greatest extent practicable.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those subject to the exemption in §15.3(s)(2)(A) of this title (relating to Administration). If a permittee demonstrates that there is no practicable alternative to crossing critical dune areas, the local government may allow a permittee to construct a pipeline across previously disturbed areas, such as blowout areas. Where use of previously disturbed areas is not practicable, the local government shall require the permittees to avoid adverse effects on or disturbance of dune surfaces and shall require the mitigation sequence if the adverse effects are unavoidable.

(B) Location of construction and beach access.

(i) Local governments shall require permittees to minimize construction and pedestrian traffic on or across dune areas to the greatest extent practicable, taking into account trends of dune movement and beach erosion in that area.

(ii) Local governments may allow permittees to route private and public pedestrian beach access to and from the public beach through washover areas or over elevated walkways in their approved dune protection and beach access plans. All pedestrian access routes and walkways shall be clearly and conspicuously marked with permanent signs by the local government if the beach access is public.

(iii) When approving proposed plats for subdivision, multiple dwelling, or commercial facilities, or other new developments, local governments should use their authority to limit private access points to the public beach to the minimum amount needed to service the development.

(iv) [~~(iii)~~] Local governments shall minimize proliferation of excessive private access by permitting only the minimum necessary private beach access points to the public beach from any proposed subdivision, multiple dwelling, or commercial facility. In some cases, the minimum beach access points may be only one access point. In determining the appropriate grouping of access points, the local government shall consider the size and scope of the development.

(v) [~~(iv)~~] Local governments and the owners and operators of commercial facilities, subdivisions, and multiple dwellings shall post signs in areas where pedestrian traffic is high, explaining the functions of dunes and the importance of vegetation in preserving dunes.

(vi) Local governments shall not allow a permittee to construct or maintain a structure on previously mitigated or compensated dunes that are seaward of a dune protection line, where practicable, except for specifically permitted dune walkovers or similar access ways.

(C) Location of roads.

(i) Wherever practicable, local governments may require permittees to locate beach access roads in washover areas, blowout areas, or other areas where dune vegetation has already been disturbed; local governments shall require permittees to build such roads along the natural land contours, to minimize the width of such roads, and where possible, to improve existing access roads with elevated berms near the beach that prevent channelization of floodwaters. Where practicable, local governments shall require permittees to locate roads at an oblique angle to the prevailing wind direction.

(ii) Wherever practicable, local governments shall provide vehicular access to and from beaches by using existing roads or from roads constructed in accordance with paragraph (1)(C) of this subsection and clause (i) of this subparagraph. Local governments shall not apply this provision in a manner which restricts public beach access.

(iii) Local governments shall include in any permit authorizing the construction of roads a permit condition prohibiting persons from using or parking any motor vehicle on, through, or across dunes in critical dune areas except for the use of vehicles on designated access ways.

(D) Artificial runoff channels. Local governments shall only authorize construction of artificial runoff channels (that direct stormwater flow) if the channels are located in a manner which avoids erosion and unnecessary construction of additional channels. Local governments shall require that permittees make maximum use of natural or existing drainage patterns, whenever practicable, when locating new channels and stormwater retention basins. However, if new channels are necessary, local governments shall require that permittees direct all runoff inland and not to the Gulf of Mexico through critical dune areas, where practicable.

(3) Mitigation. Mitigation means repairing, rehabilitating, or restoring affected dunes and dune vegetation. Local governments shall require permittees, as a condition of the permit, to mitigate all adverse effects to dunes and dune vegetation which will occur after a

permittee has avoided and minimized such adverse effects to the greatest extent practicable. Local governments shall require the permittee to mitigate damage to dunes and dune vegetation so as to provide, when compared to the pre-existing dunes and dune vegetation, an equal or greater area of vegetative cover and dune volume, an equal or greater degree of protection against damage to natural resources, and an equal or greater degree of protection against flood and erosion damage and other nuisance conditions to adjacent properties. When determining the appropriate mitigation method, local governments shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts.

(A) Mitigation standards for dunes. Local governments may allow a permittee to mitigate adverse effects on dunes using vegetative or mechanical means. Local governments shall require that a permittee proposing to restore dunes and dune vegetation as provided in §15.7(e) of this title (relating to Local Government Management of the Public Beach) use the following techniques:

(i) restore dunes to approximate the naturally formed dune position or location, contour, volume, elevation, vegetative cover, and sediment content in the area;

(ii) allow for the natural dynamics and migration of dunes;

(iii) use discontinuous [~~or continuous~~] temporary sand fences or an approved method of dune restoration, where appropriate, considering the characteristics of the site; and

(iv) restore or repair dunes using indigenous vegetation that will achieve the same protective capability or greater capability as the surrounding natural dunes.

(B) Stabilization of critical dune areas. Local governments shall give priority for stabilization to blowouts and breaches when permitting restoration of dunes. Before permitting stabilization of washover areas, local governments shall:

(i) assess the overall impact of the project on the beach/dune system;

(ii) consider any adverse effects on hydrology and drainage which will result from the project; and

(iii) require that equal or better public beach access be provided to compensate for impairment of any public beach access previously provided by the washover area.

(4) Compensation. Compensation means compensating for effects on dunes and dune vegetation by replacing or providing substitute dunes and dune vegetation. Local governments shall require the permit holder to compensate for the adverse effects to dunes and dune vegetation at a 1:1 ratio. Compensation may be undertaken both on-site and off-site; however, off-site compensation may only be allowed as provided in subparagraph (B) of this paragraph.

(A) On-site compensation. On-site compensation consists of replacement of the affected dunes or dune vegetation on the property where the damage to dunes and dune vegetation occurred and seaward of the local dune protection line. A local government shall require permittees to undertake compensation on the construction site, where practicable. A local government shall require a permittee to follow the requirements provided in paragraph (3)(A) of this subsection and paragraph (4)(C)(iii) - (iv) of this subsection when replacing dunes or dune vegetation.

(B) Off-site compensation. Off-site compensation consists of replacement of the affected dunes or dune vegetation in a location outside the boundary of the property where the damage to dunes and dune vegetation occurred. The landward limit of allowable off-site mitigation is the local dune protection line. Local governments shall require that a permittee's compensation efforts take place on the construction site unless the permittee demonstrates the following facts to the local government:

(i) on-site compensation is not practicable;

(ii) the off-site compensation will be located as close to the construction site as practicable;

(iii) the proffered off-site compensation has achieved a 1:1 ratio of proposed adverse effects on successful, completed, and stabilized restoration prior to beginning construction;

(iv) the permittee has notified FEMA, Region 6, Risk Analysis Branch, of the proposed off-site compensation.

(C) Information required for off-site compensation. Local governments shall require permittees to provide the following information when proposing off-site compensation:

(i) the name, address, phone number, and electronic mail address, [~~fax number,~~] if applicable, of the owner of the property where the off-site compensation will be located;

(ii) a legal description of property intended to be used for the proposed off-site compensation;

(iii) the source of sand and the dune vegetation;

(iv) all information regarding permits and certificates issued for the restoration of dunes on the compensation site;

(v) all relevant information regarding the success, current status, and stabilization of the dune restoration efforts on the compensation site;

(vi) any increase in potential flood damage to the site where the adverse effects on dunes and dune vegetation will occur and to the public and private property adjacent to that site; and

(vii) the proposed date of initiation of the compensation. Local governments shall include a condition in each permit authorizing off-site compensation which requires permittees to notify local governments in writing of the actual date of initiation within ten working days after compensation is initiated. If the permittee fails to begin compensation on the date proposed in the application, the permittee shall provide the local government with the reason for the delay. Local governments shall take this reason into account when determining whether a permittee has violated the compensation deadline.

(5) Compensation for adverse effects on dune vegetation. Local governments shall require that permittees compensate for adverse effects on dune vegetation by planting indigenous vegetation on the affected dunes and shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts. Local governments may allow a permittees to use temporary sand fencing or another approved method of dune restoration. Local governments shall prohibit a permittee from compensating for adverse effects on dune vegetation by removing existing vegetation from private or state-owned property unless the permittee has received prior written permission from the property owner or the state. In addition to the requirement that permission be obtained from the property owner, all persons are prohibited from removing vegetation from a critical dune area or seaward of a dune protection line unless specifically authorized to do so in a dune protection permit. Local governments shall include conditions in such permits requiring the permittee to provide a copy of the written permission for vegetation removal and to identify the source of any sand and vegetation which will be used to

compensate for adverse effects on dunes and dune vegetation in the mitigation plan contained in the permit application.

(g) Mitigation or compensation deadline.

(1) Initiation of mitigation or compensation. Local governments shall require permittees to begin mitigation or compensation for any adverse effect(s) to dunes and dune vegetation prior to or concurrent with the commencement of construction. If mitigation or compensation is not completed in accordance with the mitigation or compensation plan prior to commencement of construction of any structure, [~~construction,~~] the local government shall require that the permittee provide the local government with proof of financial responsibility in an amount equal to that necessary to complete the mitigation or compensation. This can be done in the form of an irrevocable letter of credit, performance bond, or any other instrument acceptable to the local government.

(2) Completion of mitigation or compensation. Local governments shall require permittees to conduct compensation efforts continuously until the repaired, rehabilitated, and restored dunes and dune vegetation are equal or superior to the pre-existing dunes and dune vegetation. These efforts shall include preservation and maintenance pending completion of mitigation or compensation.

(3) Local government determination of completion of mitigation or compensation. Local governments shall determine a mitigation or compensation project is complete when the dune restoration project's position, contour, volume, elevation, and vegetative cover matches or exceeds the surrounding naturally formed dunes.

(4) General Land Office [~~State agency~~] notification of mitigation or compensation certification. Local governments shall provide written notification to the General Land Office after determining that the mitigation or compensation is complete as defined in paragraph (3) of this subsection. The General Land Office may conduct a field inspection to verify compliance with this subchapter. If the local government does not receive an objection from the General Land Office regarding the completion of mitigation or compensation within 30 working days after the General Land Office is notified in writing, the local government may certify that the mitigation or compensation is complete.

(5) Violation of mitigation or compensation deadline. The General Land Office (GLO) recognizes that the time necessary to restore dunes and dune vegetation varies with factors such as climate, time of year, soil moisture, plant stability, and storm activity. The permittee must complete the sand placement, and if applicable, the dune vegetation relocation or planting portions of the mitigation or compensation plan within one year of initiation of construction. The permittee shall be deemed to have failed to achieve mitigation or compensation if a 1:1 ratio has not been achieved within three years after initiation of construction, and the GLO may initiate enforcement as provided in §15.9 of this title (relating to Enforcement, Penalties and Remedial Order) . [~~beginning compensation efforts.~~]

§15.5. Beachfront Construction Standards.

(a) Local government certification of beachfront construction. This section provides the standards local governments shall follow when preparing that portion of the dune protection and beach access plan specifically related to issuing or conditioning beachfront construction certificates.

(1) In general, within its jurisdiction, a local government shall not allow diminution of the size of public beaches and shall preserve and enhance public access between public beaches and public roads lying landward. A local government certification shall consist of one of two affirmative findings: an affirmative finding by a local government that the proposed construction is consistent with the beach access portion of a local government's dune protection and beach access plan and does not encroach upon the public beach, nor does it interfere with, or otherwise restrict, the public's right to use and have access to and from the public beach; or an affirmative finding that the proposed construction is inconsistent with the beach access portion of a local government's dune protection and beach access plan. The beach access portion of the local government's dune protection and beach access plan shall provide that beachfront construction will not adversely affect or allow encroachments upon the public beach or interfere with or otherwise impair the public's right to use and have access to and from the public beach.

(2) No person shall initiate or perform construction in violation of Texas Natural Resources Code, §61.013 or this Chapter.

[~~(a) Local government certification of beachfront construction. This section provides the standards local governments shall follow when preparing that portion of the dune protection and beach access plan specifically related to issuing or conditioning beachfront construction certificates. In general, within its jurisdiction, a local government shall not allow diminution of the size of public beaches and shall preserve and enhance public access between public beaches and public roads lying landward. A local government certification shall consist of one of two affirmative findings: an affirmative finding by a local government that the proposed construction is consistent with the beach access portion of a local government's dune protection and beach access plan and does not encroach upon the public beach, nor does it interfere with, or otherwise restrict, the public's right to use and have access to and from the public beach; or an affirmative finding that the proposed construction is inconsistent with the beach access portion of a local government's dune protection and beach access plan. The beach access portion of the local government's dune protection and beach access plan shall provide that beachfront construction will not adversely affect or allow encroachments upon the public beach or interfere with or otherwise impair the public's right to use and have access to and from the public beach.~~]

(b) Prohibition of certification. Local governments shall not issue a certificate authorizing beachfront construction if the local government determines that the construction:

(1) reduces the size of the public beach in any manner;

(2) closes or otherwise impairs any existing public beach access point unless the local government simultaneously provides or requires the permittee to provide equivalent or better public access; or

(3) includes a proposal to construct [~~build~~] a concrete slab or other impervious surfaces [~~surface~~] within 200 feet of the line of vegetation or within the eroding area boundary (if such a boundary is established in the local beach/dune plan), whichever distance is greater. Local governments may authorize construction of a concrete slab or other impervious surfaces [~~surface~~] beneath the footprint of a habitable structure elevated on pilings provided the concrete slab or impervious surface will not extend beyond the footprint [~~perimeter~~] of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the footprint [~~perimeter~~] of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. Permeable [~~The use of permeable~~] materials such as brick pavers, limestone, or gravel may be used to construct driveways [~~is recommended for drives~~] or parking areas.

(c) Encroachments on public beaches.

(1) Prohibition of construction on the public beach. Except as provided in §15.11, a local government is prohibited from issuing a

certificate authorizing any person to undertake any construction on the public beach or any construction that encroaches in whole or in part on the public beach. This prohibition does not prevent the approval of man-made vegetated mounds and dune walkovers under a properly issued dune protection permit and beachfront construction certificate. Any issuance or approval of a permit, certificate, or any other instrument contrary to this subsection is void.

(2) Construction landward of the public beach. Except as provided in §15.11, local governments shall not issue any beachfront construction certificate authorizing construction landward of the public beach that functionally supports or depends on, or is otherwise related to, proposed or existing structures that encroach on the public beach, regardless of whether the encroaching structure is on land that was previously landward of the public beach.

(d) Dedication of new beach access points.

(1) Pursuant to the authority provided in the Open Beaches Act, §61.015(g), and as a condition of beachfront construction certification as to consistency with a local government's plan, a local government shall require a permittee to dedicate to the public new public beach access or parking area(s), where necessary, for consistency with the beach access and use, vehicular control, or beach user fee provisions of the pertinent state-approved dune protection and beach access plan. Such provisions shall incorporate the standards for pedestrian and vehicular access established in §15.7 of this title (relating to Local Government Management of the Public Beach).

(2) A local government shall require a permittee to dedicate an access area if it issues a certificate allowing a permittee to conduct activities which will impair access to and from the beach in any manner. Such a dedicated access area shall provide access equivalent to or better than the access impaired by the permittee's activity and shall be consistent with the pertinent provisions regarding beach access and use, vehicular controls.

§15.6. Concurrent Dune Protection and Beachfront Construction Standards.

(a) Local government application of standards. This section provides the standards local governments shall follow when issuing, denying, or conditioning dune protection permits and beachfront construction certificates. This section applies to all construction within the geographic scope of this subchapter and to either permits or certificates or both. The requirements of this section are in addition to the requirements in §15.4 of this title (relating to Dune Protection Standards), and §15.5 of this title (relating to Beachfront Construction Standards).

(b) Location of construction. Local governments shall require permittees to locate all construction as far landward as is practicable and shall not allow any construction which may aggravate erosion.

(c) Prohibition of erosion response structures. Local governments shall not issue a permit or certificate allowing construction of an erosion response structure. Notwithstanding the general prohibition on constructing erosion response structures, a local government may authorize the construction of a structural shore protection project that conforms with the policies of the General Land Office [~~Coastal Coordination Council~~] promulgated in 31 TAC §26.26(b). [~~31 TAC §501.26(b).~~] However, a local government may issue a permit or certificate authorizing construction of a retaining wall, as defined in §15.2 of this title (relating to Definitions), under the following conditions. These conditions only apply to the construction of a retaining wall; all other erosion response structures are prohibited.

(1) A local government shall not issue a permit authorizing the construction of a retaining wall within the area 200 feet landward of the line of vegetation.

(2) A local government may issue a permit authorizing construction of a retaining wall in the area more than 200 feet landward of the line of vegetation.

(d) Existing erosion response structures. In no event shall local governments issue permits or certificates authorizing maintenance or repair of an existing erosion response structure seaward of the line of vegetation [~~on the public beach~~] or the enlargement or improvement of the structure within 200 feet landward of the line of vegetation. [~~natural vegetation line.~~] Notwithstanding the general prohibition on maintaining or repairing erosion response structures, a local government may authorize the maintenance or repair of a structural shore protection project that conforms with the policies of the General Land Office [~~Coastal Coordination Council~~] promulgated in 31 TAC §26.26(b). [~~31 TAC §501.26(b).~~] Also within 200 feet landward of the line of vegetation, [~~natural vegetation line,~~] local governments shall not issue a permit or certificate allowing any person to maintain or repair an existing erosion response structure if the structure is more than 50% damaged, except under the following circumstances.

(1) When failure to repair the structure will cause unreasonable hazard to a public building, public road, public water supply, public sewer system, or other public facility immediately landward of the structure.

(2) When failure to repair the structure will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure.

(e) Construction in flood hazard areas.

(1) A local government shall not issue a permit or certificate that does not comply with FEMA's regulations governing construction in flood hazard areas. FEMA prohibits man-made alteration of sand dunes and mangrove stands within Zones V1-30, V, and VE on the community's flood insurance rate maps which would increase the potential for flood damage.

(2) A local government shall inform the General Land Office and the FEMA regional representative in Texas before it issues any variance from FEMA regulations or allows any activity done in variance of FEMA's regulations found in Volume 44 of the Code of Federal Regulations, Parts 59-77. Variances may adversely affect a local government's participation in the National Flood Insurance Program.

(3) A local government shall not issue a permit or certificate that does not comply with FEMA minimum requirements or with the FEMA-approved local ordinance or county commissioners court order.

(f) Construction in eroding areas. Local governments with jurisdiction over eroding areas shall follow the standards provided in §15.4 of this title (relating to Dune Protection Standards) and §15.5 of this title (relating to Beachfront Construction Standards). If there is any conflict between this subsection, §15.4 of this title, and §15.5 of this title, this subsection applies. The General Land Office shall supply information for or assist a local government in determining eroding areas and the landward boundary of eroding areas. In addition, because of the higher risk of damage from flooding or erosion in such areas, local governments shall:

(1) require that structures built in eroding areas be elevated on pilings in accordance with FEMA minimum standards or above the natural elevation (whichever is greater);

(2) require that structures located on property adjacent to the public beach be designed for feasible relocation;

(3) allow a permittee to alter or pave only the ground within the footprint of the habitable structure, not including amenities

[~~structure~~] (however, permeable materials such as brick pavers, gravel or crushed limestone may be used to construct [~~stabilize~~] driveways) only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet from the line of vegetation or landward of an eroding area boundary established in the local beach/dune plan, whichever distance is greater; and

(4) Unless otherwise restricted by the local plan, and if consistent with the requirements of National Flood Insurance Program, local governments may permit the construction of a storage area or areas with breakaway or louvered walls or for enclosures required by local building or safety codes.

(5) Notwithstanding the provisions of paragraph (3) of this subsection, a local government may allow a permittee to place unreinforced fibercrete in 4 foot by 4 foot sections, 4 inches thick separated by expansion joints beneath the footprint of the habitable structure, as defined in §15.2 of this title (relating to Definitions), [~~not including the area under decks,~~] only if the fibercrete is not structurally attached to the pilings. [~~pilings and~~] The placement of unreinforced fibercrete will be entirely undertaken, constructed, and located at least 25 feet from the landward toe of the foredunes. If no dunes exist, placement of unreinforced fibercrete will [~~may~~] only be undertaken, constructed, and located at least 100 feet landward of the line of vegetation, or landward of an eroding area boundary established in the local dune protection and beach access plan, whichever distance is greater. Gravel or crushed limestone may be used to construct [~~stabilize~~] driveways and parking areas in the area 50 feet landward of the line of vegetation to the Dune Protection Line.

(g) Construction of certain parking areas or walkways. Notwithstanding the standards provided in §15.4(c)(8) of this title (relating to Dune Protection Standards), §15.5(b)(3) of this title (relating to Beachfront Construction Standards), and subsection (f) of this section, if parking areas or walkways for commercial facilities or public beach access facilities are required to be accessible for persons with disabilities and the use of permeable materials is not practicable, a local government may allow a concrete slab or other impervious surface whose area does not exceed 5.0% of the square footage of the property, upon demonstration of necessity by the applicant. If there is any conflict between this subsection, §15.4(c)(8) of this title, §15.5(b)(3) of this title, and subsection (f) of this section, this subsection applies.

(h) [~~(g)~~] Construction affecting natural drainage patterns. Local governments shall not issue a certificate or permit authorizing construction unless the construction activities will minimize impacts on natural hydrology. Such projects shall not cause erosion of adjacent properties, critical dune areas, or the public beach.

(i) Construction of dune walkovers or similar structures. Proliferation of dune walkovers shall be minimized as provided for in §15.4(f)(2)(B) of this title. Local governments shall require permittees to construct dune walkovers in the following manner:

(1) Dune walkovers shall be constructed to allow for the growth of dune vegetation and the migration of dunes under the walkovers.

(A) The width of a dune walkover or similar structure is limited to 4 feet wide, where practicable. An increased width of up to 8 feet may be permitted for public access walkovers, shared walkovers for three or more residences, or for wheelchair or golf-cart use. The need for a dune walkover or similar structure wider than 4 feet must be demonstrated during the permit application process. A local government may construct a dune walkover or similar structure that is more than 8 feet wide for the purpose of public beach access with approval of the GLO.

(B) The lowest level of the walkover must be of sufficient elevation to accommodate expected increases in dune height. At a minimum, the lowest level of the dune walkover with a width of 4 feet or less must be constructed at a height of at least 3 feet above the highest point of the tallest dune crest beneath and immediately adjacent to the dune walkover. The lowest level of a dune walkover with a width of greater than 4 feet must be constructed at a minimum height equal to the width of the walkover above the highest point of the tallest dune crest beneath and immediately adjacent to the dune walkover. An alternative design may be approved by the GLO and the local government upon demonstration by the applicant that a dune walkover is unable to comply with these requirements due to the physical limitations of the dune system.

(C) Slats forming the deck of the dune walkover shall be spaced at least 1/2 inches apart so that sunlight and rainfall can penetrate to vegetation below and so that sand will not accumulate on the deck.

(2) Use of concrete to stabilize dune walkover pilings is prohibited.

(3) For all new construction of public dune walkovers in areas where vehicles are prohibited from driving on and along the public beach, local governments are required to construct walkovers accessible for persons with disabilities, where practicable.

(4) The requirements in paragraphs (1) - (3) of this subsection apply to all new construction of dune walkovers and similar structures and any major repairs to existing dune walkovers and similar structures.

(j) [~~(h)~~] Emergency response to oil or hazardous substance spills. Any person responding to spills shall comply with the following regulations when cleaning up or disposing of oil or hazardous substances in the beach/dune system.

(1) The state on-scene coordinator is responsible for contacting the GLO Beach/Dune Team [~~Resource Management Division~~] regarding proposed cleanup and disposal methods.

(2) The state on-scene coordinator shall, in consultation with the state natural resource trustees and the GLO Beach/Dune Team and through the Incident Command System, determine the appropriate depth for excavation and the appropriate quantity of sand to be removed, if any, from the beach/dune system.

(A) Spill cleanup. Cleanup methods shall avoid and otherwise minimize adverse impacts to the beach/dune system by ensuring that:

(i) Removal of sand from the beach is limited to the absolute minimum and will not exacerbate shoreline erosion.

(ii) Manual cleanup methods are used, if practicable.

(iii) Grading or scraping of the beach is minimized, and grading of non-oiled or non-hazardous areas is prohibited.

(B) Disposal of contaminated sand. Disposal methods shall avoid adverse impacts to the beach/dune system by ensuring that:

(i) Before any scraped sand is relocated within the beach/dune system, the material shall be tested for toxicity and percent of oiling. Only material that does not pose a threat to human health and the environment may remain in the beach/dune system. New dunes (man-made mounds) may be built with non-hazardous material provided that they are built in accordance with §15.7(e) of this title (relating to Restored dunes on public beaches) and placed in areas preapproved by the state natural resource trustees. A dune protection permit is not required for such new dune creation. The disposal shall be in

accordance with applicable, relevant and appropriate requirements established by local state and federal laws.

(ii) Hazardous materials shall be removed and disposed of as required by local, state and federal laws.

(iii) Disposal of waste must be in compliance with applicable state and federal laws and regulations of the Texas Commission on Environmental Quality [~~Natural Resources Conservation Commission~~] and the United States Environmental Protection Agency. Disposal of oiled, non-hazardous sand shall be in accordance with applicable state and federal law, except that such sand shall not be disposed of in a location on or adjacent to dune vegetation, as defined in §15.2 of this title (relating to Definitions).

§15.7. Local Government Management of the Public Beach.

(a) Standards applicable to local governments. This section provides standards applicable to local government issuance, denial, or conditioning of permits or certificates, as well as all other local government activities relating to management of public beaches.

(b) Construction of coastal and shore protection projects. Local governments shall encourage carefully planned beach nourishment and sediment bypassing for erosion response management and prohibit erosion response structures within the public beach and 200 feet landward of the line of vegetation.

(c) Monitoring. A local government or the state may require a permittee to conduct or pay for a monitoring program to study the effects of a coastal and shore protection project on the public beach. Further, permittees are required to notify the state and the appropriate local government of any discernible change in the erosion rate on their property.

(d) Requirements for beach nourishment projects. A local government shall not allow a beach nourishment project unless it finds and the project sponsor demonstrates that the following requirements are met.

(1) The project is consistent with the local government's dune protection and beach access plan.

(2) The sediment to be used is of effective grain size, mineralogy, and quality or the same as the existing beach material.

(3) The proposed nourishment material does not contain any of the hazardous substances listed in the Code of Federal Regulations, Volume 40, Part 300, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(4) There will be no adverse environmental effects on the property surrounding the area from which the sediment will be taken or to the site of the proposed nourishment.

(5) The removal of sediment will not have any adverse impacts on flora and fauna.

(6) There will be no adverse effects caused from transporting the nourishment material.

(e) Restoration of dunes on public beaches. Sand dunes, either naturally created or restored, may aid in the preservation of the coastal environment by providing a protective barrier against beach erosion processes. Except as otherwise provided, local governments shall allow restoration of dunes on the public beach no more than 20 feet seaward of the landward boundary of the public beach. Restored dunes may be located farther seaward than the 20-foot restoration area only upon an affirmative demonstration by the permit applicant that substantial dunes would likely form farther seaward naturally and would not restrict or interfere with public access to the beach at normal high tide. Such seaward extension past the 20-foot area must first receive prior written approval of the General Land Office. In the absence of such an affirmative demonstration by the applicant, a local government shall require the applicant to meet the requirements provided in §15.4(f)(3) of this title (relating to Dune Protection Standards) and the following standards relating to the location of restored dunes.

(1) Local governments shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the landward boundary of the public beach. Local governments shall ensure that the 20-foot restoration area follows the natural migration of the vegetation line.

(2) Local governments shall not allow any person to restore dunes, even within the 20-foot corridor, if such dunes would restrict or interfere with the public use of the beach at normal high tide.

(3) Local governments shall require persons to restore dunes to be continuous with any surrounding naturally formed dunes and shall approximate the natural position, contour, volume, elevation, vegetative cover, and sediment content of any naturally formed dunes in the proposed dune restoration area.

(4) Local governments shall require persons restoring dunes to use indigenous vegetation that will achieve the same protective capability as the surrounding natural dunes.

(5) Local governments shall not allow any person to restore dunes using any of the following methods or materials:

(A) hard or engineered structures;

(B) materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;

(C) fine, clayey, or silty sediments;

(D) sediments containing the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; and

(E) sand obtained by scraping or grading dunes or the beach.

(6) Local governments may allow persons to use the following dune restoration methods or materials:

(A) piles of sand having similar grain size and mineralogy as the surrounding beach;

(B) temporary, discontinuous [~~temporary~~] sand fences conforming to the most recent edition of the General Land Office Dune Protection and Improvement Manual for the Texas Gulf Coast guidelines;

(C) organic brushy materials such as used Christmas trees and seaweed; and

(D) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any changes that may increase erosion of the public beach.

(7) Local governments shall protect restored dunes under the same restrictions and requirements as natural dunes under the local government's jurisdiction.

(8) Local governments shall not allow a permittee to construct or maintain a [~~private~~] structure on the restored dunes that are

[~~within critical dune areas or~~] seaward of a dune protection line, except for specifically permitted dune walkovers or similar access ways.

(9) All applications submitted to a local government for the restoration of dunes on the public beach shall be forwarded to the General Land Office at least ten working days prior to the local government's consideration of the permit. Failure of the General Land Office to submit comments on an application shall not waive, diminish, or otherwise modify the beach access and use rights of the public.

(f) Scientific research projects. Local governments may exempt a scientific research project from the requirements of §15.4(c) of this title (relating to Dune Protection Standards) or subsection (e) of this section provided the research is conducted by an academic institution or state, federal, or local government. Prior to conducting the research, the project manager shall submit a detailed work plan and monitoring plan for approval by the General Land Office. The research activities shall not materially weaken existing dunes or dune vegetation, or increase erosion of adjacent properties.

(g) Dune walkovers. Local governments shall only allow dune walkovers, including other similar beach access mechanisms, which extend onto the public beach under the following circumstances.

(1) Local governments shall require that permittees restrict the walkovers, to the greatest extent possible, to the most landward point of the public beach.

(2) Local governments shall require that permittees construct and locate the walkovers in a manner that will not interfere with or otherwise restrict public use of the beach at normal high tides.

(3) Local governments shall require permittees to construct dune walkovers in a manner that complies with §15.6(i) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards). [~~allows for the growth of dune vegetation and the migration of dunes under the walkovers to the greatest extent practicable.~~]

(4) Local governments shall require that permittees relocate walkovers to follow any landward migration of the public beach or seaward migration of dunes using the following procedures and standards.

(A) After [~~a major storm or any other event causing~~] significant landward migration of the landward boundary of the public beach, local governments shall require permittees to shorten any dune walkovers encroaching on the public beach to the appropriate length for removal of the encroachment. This requirement shall be contained as a condition in any permit and certificate issued authorizing construction of walkovers. [~~Local governments are required to assess the status of the public beach boundary within 30 days after a major storm or other event causing significant landward migration of the public beach. After the assessment, local governments shall inform the General Land Office of any encroachments on the public beach within ten days of completing the assessment.~~]

(B) In cases where [~~the migration of the landward boundary of the public beach occurs slowly over a period of time or where~~] a dune walkover needs to be lengthened because of the seaward migration of dunes, the permittee shall apply for a permit or certificate authorizing the modification of the structure.

(h) Preservation and enhancement of public beach use and access. A local government shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach. A local government shall not impair or close an existing access point, [~~point or~~] close a public beach to pedestrian or vehicular traffic, or modify public beach parking [~~traffic~~] without prior approval from the General Land Office. The General Land Office may approve and certify a local government's modification to their beach access and use plan based upon the General Land Office's affirmative finding that such modifications preserve or enhance the public's right to use and access the public beach.

(1) For the purposes of this subchapter, beach access and use is presumed to be preserved if the following criteria are met.

(A) Parking on or adjacent to the beach is adequate to accommodate one car for each 15 linear feet of beach.

(B) Where vehicles are prohibited from driving on and along the beach, ingress/egress access ways are no farther apart than 1/2 mile.

(C) Signs are conspicuously posted which explain the nature and extent of vehicular controls, parking areas, and access points, including access for persons with disabilities. [~~disabled person. Local governments may establish their own beach access and use standards for General Land Office approval and certification based upon the General Land Office's affirmative finding that such standards preserve and enhance the public's right to use and access the public beach.~~]

(2) A local government shall have an adopted, enforceable, written policy prohibiting the local government's abandonment, relinquishment, or conveyance of any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access, unless an alternative equivalent or better beach access is first provided by the local government consistent with its dune protection and beach access plan and this subchapter [~~plan~~].

(3) This provision does not apply to any existing local government traffic regulations enacted before the effective date of this subchapter, and the former law is continued in effect until the regulations are amended or changed in whole or in part. New or amended vehicular traffic regulations enacted for public safety, such as establishing speed limits and pedestrian rights-of-way, are exempt from the certification procedure but must nevertheless be consistent with the Open Beaches Act and this subchapter.

(4) This subchapter does not prevent a local government from using its existing authority to close individual beach access points for emergencies related to public safety. However, the standards and procedures for such emergency closures shall be included in its state-approved dune protection and beach access plan. The GLO must be notified by the local government as soon as practicable of any emergency closures.

(5) A local government may not restrict vehicular traffic from a public beach unless it preserves or enhances beach access for persons with disabilities. [~~disabled persons.~~] For the purposes of vehicular restrictions only, beach access for [~~disabled~~] persons with disabilities is preserved if the following criteria are met:

(A) Where vehicles are prohibited from driving to mean high tide, at least one access way with a stable, slip-resistant surface to the approximate high tide line is provided in each jurisdiction and signs identifying the accessible beach access route are conspicuously posted at the landward terminus of the access route.

(i) Where a local government can demonstrate that providing and maintaining a stable, slip-resistant surface to the approximate high tide line is not practicable, local governments shall provide an alternate means of access for persons with disabilities, such as beach wheelchairs.

(ii) In areas where vehicular access is prohibited, local governments have until December 31, 2023, to come into compliance with the above provisions.

(B) [~~(A)~~] In areas where vehicles are prohibited from driving on and along the beach, golf carts must also be prohibited. However, the local government must allow the use on the beach of a golf cart, as defined by §551.401, Texas Transportation Code, [~~§502.001, Texas Transportation Code,~~] if:

(i) the golf cart is being operated by or for the transportation of a [~~disabled~~] veteran with disabilities or a person with a physical disability; and

(ii) a disabled parking placard issued under §681.004, Texas Transportation Code, is displayed in a conspicuous manner on the golf cart.

(C) [~~(B)~~] The local government must provide at least one ingress/egress access way accessible to golf carts for each area of the beach where vehicles are prohibited.

(D) [~~(C)~~] A local government may limit the use of golf carts for the transportation of a person with a physical disability to electric powered golf carts.

(E) [~~(D)~~] In this section, "golf cart" has the meaning assigned by §331.401, Texas Transportation Code and "public highway" has the meaning [~~have the meanings~~] assigned by §502.001, Texas Transportation Code.

(i) Request for General Land Office approval of beach access plans. [~~plan.~~] When requesting approval of or an amendment to a beach access plan, a local government shall submit a new or amended plan to the General Land Office providing the information and following procedures outlined in §15.3(o) of this title (relating to Administration) and the following information:

(1) a current description and map of the entire beach access system within its jurisdiction;

(2) a detailed [~~the~~] status of beach access demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(3) a detailed description of the proposed beach access plan replacing the existing beach access system. Such description shall demonstrate the method of providing equivalent or better access to and from the public beaches, including access for [~~disabled~~] persons with disabilities; and

(4) a vehicular control plan, if the local government proposes either new or amended vehicular controls for the public beach. The vehicular control plan must include, at a minimum, the following information:

(A) an inventory and description of all existing vehicular access ways to and from the beach and existing vehicular use of the beach;

(B) all legal authority, including local government ordinances that impose existing vehicular controls;

(C) a detailed description of any proposed changes to vehicular access;

(D) [~~(C)~~] a statement of [~~any~~] short-term or long-range goals for restricting or regulating vehicular access and use;

(E) [~~(D)~~] an analysis and statement of how the proposed vehicular controls are consistent or inconsistent with the state standards for preserving and enhancing public beach access set forth in this subchapter; [~~subchapter. If a local government or the state determines that the vehicular controls are not consistent with state standards, the local government shall prepare a plan for achieving consistency within a period of time to be determined by the General Land Office. This plan shall include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements;~~] and

(F) [~~(E)~~] a description of how vehicular management relates to beach construction management, beach user fees, and dune protection within the jurisdiction of the local government.

(j) Integration of vehicular control plan and other plans. The vehicular control plan may be a part of a local government's beach access and use plan required under the Texas Natural Resources Code, §61.015, any beach user fee plan required under the Texas Natural Resources Code, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office encourages local governments to combine and integrate these various plans and programs.

(k) General Land Office [~~State agency~~] approval of vehicular control plan adopted or amended after the effective date of this subchapter. A local government shall submit the vehicular control plan to the General Land Office no later than 90 working days prior to taking any action on the plan. This provision does not prevent a local government from exercising its existing authority over vehicular controls in emergencies. The standards and procedures for such emergency vehicular controls shall be submitted to the state in the vehicular control portion of a local government's dune protection and beach access plan. A plan may be approved if the vehicular controls are found to be consistent with the Open Beaches Act and with this subchapter. Prior to final adoption or implementation of a new or amended vehicular control ordinance, the local government shall obtain state certification of the plan for vehicular control pursuant to the Open Beaches Act, Texas Natural Resources Code, §61.022.

(1) If the General Land Office determines that existing beach access or proposed changes to vehicular controls are not consistent with state standards, the local government shall prepare a plan for achieving consistency within a period of time to be determined by the General Land Office. This plan shall include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements.

(m) [~~(l)~~] Maintaining the public beach. Local governments shall prohibit beach maintenance activities unless maintenance activities will not materially weaken dunes or dune vegetation or reduce the protective functions of dunes. Local governments shall prohibit beach maintenance activities which will result in the significant redistribution of sand or which will significantly alter the beach profile or the line of vegetation. All sand moved or redistributed due to beach maintenance activities shall be returned to the area between the line of vegetation and mean high tide. The General Land Office encourages the removal of litter and other debris by handpicking or raking and strongly discourages the use of machines (except during peak visitation periods which disturb the natural balance of gains and losses in the sand budget and the natural cycle of nutrients.

(n) [~~(m)~~] Request for temporary approval of seaweed relocation. During an extraordinary seaweed landfall event, a local government may submit a written request to the General Land Office for approval to relocate seaweed.

(1) Approval to relocate seaweed may be requested in areas where:

(A) the beach is restricted by an erosion response structure;

(B) the erosion response structure prevents the reasonable employment of GLO approved routine seaweed maintenance practices, and

(C) the use of routine seaweed maintenance practices in such areas would significantly restrict or impair public beach access and use.

(2) The General Land Office will review each request to determine whether a seaweed landfall event is extraordinary and if it impairs or restricts public beach access and use. The General Land Office will evaluate any proposed seaweed management activities for consistency with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune rules. The General Land Office's approval will be valid for up to 120 days. The request must include a comprehensive seaweed management plan that, at a minimum, provides the following items:

(A) a description of how the seaweed event is extraordinary, including supporting documentation, such as color photographs;

(B) information justifying how routine maintenance practices cannot be reasonably employed without restricting or impairing public beach access and use during the seaweed landfall event;

(C) a complete description of the geographic scope of proposed seaweed management activities, including a map or site plan which identifies the line of vegetation in relation to the seaweed placement area;

(D) a complete description of the proposed seaweed management activities, expected schedule of activities, and why other alternatives are not practicable;

(E) a detailed description of how the proposed seaweed management activities will not materially affect the beach profile, public beach access and use, dunes and dune vegetation, dune hydrology, or beach erosion;

(F) a detailed description of how the seaweed management activities will not result in significant or permanent removal of sand from the beach and dune system;

(G) a description of the equipment to be used;

(H) a comprehensive dune mitigation plan, if dunes or dune vegetation will be adversely affected;

(I) information describing how wildlife will be avoided and a copy of the wildlife monitor's certificate or a certification that a monitor is not required; and

(J) a description of any coordination with applicable local, state and federal agencies that will be required.

(3) Within 60 days after the expiration of the approved seaweed management plan, the local government must assess the impacts of the seaweed management activities, and provide the General Land Office with a detailed assessment report describing any benefits or challenges with implementing the activities employed and any affects those activities had on the beach profile, public beach access and use, dunes and dune vegetation, dune hydrology, beach erosion, and any mitigation activities conducted.

(o) [~~(n)~~] Prohibitions on signs. A local government shall not cause any person to display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or allow to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to and from the public beach or the right to use the public beach as guaranteed by this subchapter, the Open Beaches Act, and the common law right of the public.

§15.8. Beach User Fees.

(a) Eligibility. Local governments shall not initiate or amend a beach user fee unless the governing body of the local government with jurisdiction over the area subject to the fee has a state approved dune protection and beach access plan.

(b) Reciprocity of fees. Within each county, local governments are required to establish a state-approved system for reciprocity of fees and fee privileges among the county and the different local governments authorized to charge beach user fees. The establishment of a system of beach user fee reciprocity shall be a condition of state approval of local dune protection and beach access plans.

(c) Approval [~~Amount~~] of beach user fees.

(1) A local government shall not impose a fee or charge for the exercise of the public right of access to and from public beaches. A local government may charge beach users a fee in exchange for providing beach-related services to beach users in general.

(2) The General Land Office will only approve a beach user fee if the fee is reasonable taking into account the cost to the local government of providing public services and facilities directly related to the public beach. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services. In addition, any fee collected for off-beach parking to provide access to and from the public beach is considered a beach user fee.

[~~(1) A local government shall not impose a fee or charge for the exercise of the public right of access to and from public beaches. A local government may charge beach users a fee in exchange for providing services to beach users in general. A local government may only impose a beach user fee if the fee is reasonable taking into account the cost to the local government of providing public services and facilities directly related to the public beach. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services. In addition, any fee collected for off-beach parking to provide access to and from the public beach is considered a beach user fee.~~]

(3) [~~(2)~~] Local governments shall not impose a beach user fee which:

(A) exceeds the necessary and actual cost of providing reasonable beach-related public facilities and services;

(B) unfairly limits public use of and access to and from public beaches in any manner;

(C) is inconsistent with this subsection or the Open Beaches Act; or

(D) discriminates on the basis of residence.

(d) Beach user fee plan. A local government that proposes a new or amended beach user fee shall first prepare and submit to the General Land Office for review and approval a plan that includes, at a minimum, the following information:

(1) a description of the current beach access system within its jurisdiction demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(2) a listing and description of all existing beach user fees charged by the local government and by all other local governments in the same county;

(3) all legal authority for charging a beach user fee, [~~authority,~~] including local ordinances that authorize the collection of

existing beach user fees, and the proposed ordinances for a new or amended beach user fee; [~~fees;~~]

(4) an analysis and statement of how the proposed user fee is or is not consistent with state standards set forth in this subchapter for preserving and enhancing public beach access, including how the fee is non-discriminatory and how and where adequate free access will be maintained; [~~access;~~]

(5) a detailed description of how the beach user fee is reasonable and how it relates to beach-related services such as beachfront amenities, [~~construction,~~] vehicular controls [~~controls,~~] and parking, and dune protection within the jurisdiction of the local government;

(6) a report detailing the previous five years of beach user fee revenue and expenditures on beach-related services, if applicable;

(7) an estimate of the projected beach user fee revenues and the expected budget for expenditures on beach-related services, including a description of how the projections and budget were determined, for the next five years;

(8) [~~(6)~~] a description [~~statement~~] of [~~any~~] short-term and [~~or~~] long-range goals relating to the collection and use of beach user fees and beach related services that will be provided; [~~fees.~~]

(9) a description of how access for persons with disabilities will be provided or enhanced;

(10) a description of how the beach user fee will be collected and managed by the local government and an explanation of how the method of collection and management is consistent with the requirements of this chapter;

(11) where appropriate, evidence of the cost to the local government of providing existing beach-related services and how the proposed beach user fee will maintain or enhance those or additional beach-related services;

(12) any other information required for the General Land Office to determine if the fee is reasonable.

(e) General Land Office [~~State agency~~] approval and certification of beach user fees. A local government shall not impose a beach user fee or amend an existing beach user fee that is inconsistent with the beach user fee portion of its dune protection and beach access plan. To receive General Land Office [~~state~~] approval for initiating its beach user fee plan or amending a beach user fee, a local government shall submit its beach user fee plan to the General Land Office [~~and the attorney general's office~~] no later than 90 [~~working~~] days prior to any local government action on the beach user fee. The General Land Office shall certify whether the initiation or amendment of a beach user fee is consistent with this subchapter and the Open Beaches Act, as provided in §15.3(o) of this title (relating to Administration) [~~Act.~~] [~~Certification of consistency shall be by adoption into the rules authorized by the Open Beaches Act.~~]

(f) Beach user fee revenues. Revenues from beach user fees may be used only for beach-related services, as defined in §15.2 of this title (relating to Definitions). [~~services.~~] For each fiscal year, a local government shall not spend more than 10% of beach user fee revenues on reasonable administrative [~~costs~~] costs. Administrative costs must be directly related to providing support for beach-related services, such as accounting, record keeping, some personnel services, insurance, and office costs such as rent, utilities and supplies. [~~services. Each local government shall send quarterly reports to the General Land Office stating the amount of beach user fee revenues collected and itemizing how beach user fee revenues are expended. The General Land Office may prescribe reporting forms or methods. The General Land Office shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related. Reports are due no later than 60 days after the end of each quarter of the State fiscal year.~~]

(g) Recordkeeping and Reporting. Each local government shall send quarterly reports to the General Land Office on the collection and expenditures of its beach user fees.

(1) The quarterly report must state the amount of beach user fee revenues collected and itemize itemizing how beach user fee revenues are expended. The General Land Office, at its own discretion, may prescribe reporting forms or methods. Reports are due no later than 60 days after the end of each quarter of the State fiscal year. The General Land Office may request additional information, as appropriate, to evaluate a local government's compliance with these rules and the local government's beach user fee plan.

(2) Documentation sufficient to substantiate the proper collection and expenditure of beach user fees must be maintained by the local government. Such documents may include, but are not limited to, records of equipment use, payroll records, invoices, contracts, and proof of payment. Substantiating documentation must be kept by the local government for four years following the date the fees are spent. Documentation substantiating the collection or expenditures of beach user fees must be provided to the GLO within 10 working days of the local government's receipt of the request.

(h) [~~(g)~~] Beach user fee accounts. Local governments shall use the following methods for administering beach user fee accounts.

(1) Beach user fee revenues shall be maintained and accounted for so that fee collections can [~~may~~] be directly traced to expenditures on beach-related services. Beach user fee revenues shall not be commingled with any other funds. Each beach user fee revenue [~~funds and~~] shall be maintained in separate revenue accounts, or be separately tracked in the local governments accounting system. [~~accounts.~~]

(2) Beach user fee revenues shall be maintained in a separate revenue account and documented in a separate financial statement for each beach user fee or shall have a unique revenue code and be documented. [~~fee.~~] [~~Beach user fee revenue account balances and expenditures shall be documented according to generally accepted accounting principles.~~]

(3) Beach user fee revenue account balances and expenditures shall be documented according to generally accepted accounting principles.

(i) The General Land Office shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent section of a dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related services.

(j) [~~(h)~~] Free beach access. Local governments that collect a beach user fee for on-beach parking [~~or driving~~] or for off-beach parking for beach access shall maintain free public beach access by providing areas where no fee is charged for reasonably accessible parking on or off the beach and for pedestrian access in proximity to each area where a beach user fee is charged. [~~access. This requirement applies to each state-approved dune protection and beach access plan, not to each local government with jurisdiction over the public beach.~~]

(k) [~~(i)~~] Access for persons with disabilities. [~~disabled persons.~~] Local governments shall establish, preserve, and enhance access for [~~disabled~~] persons with disabilities as provided by law, including §15.7(h)(5) of this title (relating to Local Government Management of the Public Beach). The General Land Office may provide guidance

recommending additional measures to preserve and enhance access for persons with disabilities. [~~disabled persons.~~] Provisions for access for [~~disabled~~] persons with disabilities shall be included in local government dune protection and beach access plans.

(l) [~~(j)~~] Identification of fee and non-fee areas. For any local government collecting a beach user fee for on-beach parking, [~~parking or driving,~~] both fee and non-fee beach areas shall be conspicuously marked with signs that clearly indicate, at a minimum, the location of both the fee and non-fee areas and the identity of the local government collecting the fee. In addition, maps identifying fee and non-fee areas shall be provided to the public by any local government collecting a beach user fee.

(m) [~~(k)~~] Coordination with other beach-related plans. The beach user fee plan shall be a part of a local government's beach access and use plan required under the Open Beaches Act, §61.015, any vehicular control plan required under the Open Beaches Act, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office requires local governments to combine and integrate these various plans.

§15.9. Enforcement, Penalties and Remedial Orders.

(a) Penalties.

(1) Civil Penalties.

(A) In addition to any penalties assessed by a local government, any person who violates either the Dune Protection Act, the Open Beaches Act, this subchapter, a removal order issued pursuant to subsection (b) of this section, a restoration order issued pursuant to subsection (c) of this section, or a permit or certificate condition is liable for a civil penalty of not less than $50 nor more than $2000 per violation per day as provided in the Dune Protection Act, §63.181(b) and the Open Beaches Act, §61.018(c). Each day the violation occurs or continues constitutes a separate violation. Violations of the Dune Protection Act, the Open Beaches Act, and the rules adopted pursuant to those statutes are separate violations, and the General Land Office may assess separate penalties. The assessment of penalties under one Act does not preclude another assessment of penalties under the other Act for the same act or omission. Conversely, compliance with one statute and the rules adopted thereunder does not preclude the General Land Office from assessing penalties under the other statute and the rules adopted pursuant to that statute.

(B) A local government may recover civil penalties in a suit by a county attorney, district attorney, or criminal district attorney as authorized in the Dune Protection Act, §63.181(a), and the Open Beaches Act, §61.018(b).

(2) Administrative Penalties.

(A) Any person who violates [~~either~~] the Dune Protection Act, the Open Beaches Act, this subchapter, or a permit or certificate condition is also liable to the General Land Office for an administrative penalty of not less than $50 nor more than $2000 per violation per day as provided in the Dune Protection Act, §63.1811, and the Open Beaches Act, §61.0181. Provided, however, if a [~~the~~] structure that is the subject of an administrative penalty assessed pursuant to the Open Beaches Act, §61.0181, has been used as a permanent, temporary, or occasional residential dwelling by at least one person during the year before the date on which the penalty is assessed, the amount of the administrative penalty may not exceed $1000 per day the violation occurs or continues.

(B) Administrative penalties assessed by the Commissioner of the General Land Office (commissioner) as part of an order [~~for dune restoration issued~~] pursuant to the Dune Protection Act or [~~Act, §63.1813 or an order for removal of a structure issued pursuant to the~~] the Open Beaches Act [~~Act, §61.0183,~~] are subject to the notice, orders, and hearing requirements outlined in subsections (b), (c), and (d) [~~and (c)~~] of this section, respectively. In determining the amount of the administrative penalty for violations of the Dune Protection Act and the Open Beaches Act, the General Land Office will consider the following:

(i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(ii) the degree of cooperation and quality of response;

(iii) the degree of culpability and history of previous violations by the person subject to the penalty;

(iv) the amount of penalty necessary to deter future violations; and

(v) any other matter justice requires.

(3) Local governments are included in the definition of "person" in §15.2 of this title (relating to Definitions), and as such, they are liable for penalties for any violations of this subchapter, the Dune Protection Act, and the Open Beaches Act. A local government will be liable for penalties for such violations, including, but not limited to, failure to submit a dune protection and beach access plan to the General Land Office; failure to maintain and enforce its plan; and failure to implement the plan. These violations are in addition to any other violations of this subchapter for which a local government may be liable for penalties.

(4) The provisions of this section are cumulative of all other civil and administrative penalties, remedies, and enforcement and liability provisions.

(5) In determining whether the assessment of penalties is appropriate, the General Land Office will consider the following mitigating circumstances: acts of God, war, public riot, or strike; unforeseeable, sudden, and natural occurrences of a violent nature; and willful misconduct by a third party not related to the permittee or person responsible for the violation by employment or contract.

(b) Administrative Penalties and Restoration for Damage, Destruction, or Removal of Dunes or Dune Vegetation.

(1) Pursuant to the Dune Protection Act, §63.1813, the commissioner may order restoration or contract for restoration for damage, destruction, or removal of a sand dune or a portion of a sand dune or the killing, destruction, or removal of any vegetation growing on a sand dune seaward of the dune protection line or within a critical dune area in violation of the Dune Protection Act, this subchapter, or any rule, permit, or order issued under the Dune Protection Act.

(2) A person is considered to be engaging in or to have engaged in conduct that violates the Dune Protection Act or any rule, permit, or order issued under this Act if the person is the person who most recently owned, maintained, controlled, or possessed the real property on which the conduct occurred.

(3) A person damages a dune or dune vegetation when the conduct results in the destruction or removal of a dune or dune vegetation or weakens a dune or dune vegetation by increasing the potential for flood damage, washovers or blowouts; changing runoff or drainage patterns that aggravate erosion on or off the site; or may result in adverse effects to dune hydrology and dune complexes or dune vegetation.

[~~(3) Before the commissioner may order restoration or assess an administrative penalty under this section, the commissioner~~

must give written notice and an opportunity for a hearing to the person charged with the violation in accordance with the Dune Protection Act, §63.1814 and the procedures outlined in paragraph (6) of this subsection. A person who does not request a hearing within 60 days after the date on which the notice is served waives all rights to judicial review.]

(4) After issuance of a notice of violation under Texas Natural Resources Code, §63.1814, a [The] person must request a hearing to contest the commissioner's findings or initiate restoration by filing an application for a dune protection permit with the local government with jurisdiction in the area in which the violation occurred within 60 days after service of the notice of violation. The permit application must address any technical specifications and monitoring requirements described in the commissioner's notice of violation.

(5) If the person fails to apply for a permit and complete restoration as required by this section [initiate restoration] or make a timely written request for a hearing, the commissioner may order restoration, assess restoration costs, fees and expenses, impose an administrative penalty, or use any combination of these remedies. The order may specify the technical specifications for restoration and monitoring requirements.

(6) Notice, Orders, and Hearings.

(A) When the commissioner has determined that damage, destruction, or removal of dunes or dune vegetation is a violation of the Dune Protection Act, §63.091 or any rule, permit, or order issued under the Dune Protection Act, the commissioner must give written notice to the person that is taking or has taken actions that violate the Dune Protection Act, §63.091 or any rule, permit, or order issued under the Dune Protection Act. The notice must state:

(i) the specific conduct that violates the Dune Protection Act, this subchapter, or any permit or order issued under the Dune Protection Act;

(ii) that the person who has engaged in or has been engaged in the conduct that violates the Dune Protection Act, this subchapter, or any permit or order issued under the Dune Protection Act must perform restoration for the damage caused by the violation not later than the 60th day after the day the notice is served;

(iii) that failure to perform restoration for the damage caused by the violation may result in a liability for a civil penalty under the Dune Protection Act, §63.0181(b) in an amount specified, restoration contracted or undertaken by the commissioner, and liability for the costs of restoration, or any combination of those remedies; and

(iv) that the person who is engaging in or has engaged in conduct that violates the Dune Protection Act or any rule, permit, or order under the Dune Protection Act may submit, not later than the 60th day after the date on which the notice is served, a written request for a hearing to contest the commissioner's findings.

(B) The notice required by this subsection must be given in accordance with subsection (d) of this section. [given:]

[(i) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or]

[(ii) if personal service cannot be obtained or the address of the person is unknown, by posting a copy of the written notice at the site where the conduct was engaged in and by publishing notice in a newspaper with general circulation in the county in which the site is located at least two times within ten consecutive days.]

[(C) If the person requests a hearing, the commissioner must grant the hearing before an administrative law judge employed by the State Office of Administrative Hearings in accordance with the procedures outlined in the Dune Protection Act, 61.0184(g).]

(7) If the person who is engaged in or has been engaged in conduct that violated the Dune Protection Act, §63.091 or any rule, permit, or order issued under the Dune Protection Act does not pay assessed administrative penalties, mitigation costs, other assessed fees and expenses, or file an application for a dune protection permit on or before the 60th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(A) contract for restoration;

(B) request that the attorney general institute civil proceedings to collect the penalties, costs of restoration, and other fees and expenses remaining unpaid; or

(C) use any combination of the remedies prescribed by this section, or other remedies authorized by law, to collect the unpaid penalties, costs of restoration, and other fees and expenses assessed because of unauthorized conduct and its mitigation by the commissioner.

(c) Administrative Penalties and Removal of Certain Structures, Improvements, Obstructions, Barriers, and Hazards on the Public Beach.

(1) The commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach or assess an administrative penalty in accordance with the Open Beaches Act, §§61.0181 - 61.0184 and this subsection. The term "structure" as used in this subsection has the meaning assigned in §15.2(67) of this title (relating to Definitions) and includes any improvement, obstruction, barrier or hazard on the public beach.

(2) For the purposes of this subsection, a person is considered to be the person who owns, maintains, controls, or possesses a structure or other encroachment on the public beach for the purposes of this subsection if the person is the person who most recently owned, maintained, controlled, or possessed the structure or other encroachment on the public beach.

(3) The commissioner may conduct an evaluation to determine if grounds for removal of a structure exist pursuant to the Open Beaches Act, §61.0183. The evaluation will include:

(A) a determination of whether the structure is located wholly or partially on the public beach in accordance with §15.3(b) of this title (relating to Boundary of the Public Beach).

(B) if the structure is determined to be located on the public beach, the evaluation will also include:

(i) a determination as to whether the structure constitutes an imminent hazard to safety, health, or public welfare as provided in §15.15 of this title (relating to Criteria for Determining Health and Safety Hazards Associated with Structures on the Public Beach), or

(ii) a determination as to whether the structure was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan.

(4) Before the commissioner orders the removal of a structure or imposes an administrative penalty, the commissioner must give written notice and an opportunity for hearing to the person who is constructing, maintaining, controlling, owning, or possessing the structure on the public beach in accordance with the Open Beaches Act, §61.0184 and the procedures outlined in paragraph (6) of this subsection. The person must forward a copy of the notice to any entity or individual holding a lien, mortgage or any other property interest in the

structure and provide evidence of compliance with this requirement to the General Land Office within ten days of receiving the notice.

(5) If the person fails to remove the structure or make a timely written request for a hearing, the commissioner may order the removal of the structure, assess removal costs, fees and expenses, impose an administrative penalty, or use any combination of these remedies.

(6) Notice, Orders and Hearings.

(A) Before the commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard under the Open Beaches Act, §61.0183, or impose an administrative penalty under the Open Beaches Act, §61.0181, the commissioner must provide written notice to the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard on the public beach. The notice must:

(i) describe the specific structure that violates the Open Beaches Act or this subchapter;

(ii) state that the person who is constructing, maintains, controls, owns or possess the structure is required to remove the structure:

(I) within a reasonable time specified by the commissioner if the structure is an imminent threat to public health, safety or welfare as provided in §15.15 of this title (relating to Criteria for Determining Health and Safety Hazards Associated with Structures on the Public Beach); or

(II) not later than the 30th day after the date on which the notice is served if the structure was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan; or

(III) not later than the 90th day after the date on which the notice is served if the structure has been used as a permanent, temporary, or occasional residential dwelling by at least one individual at any time during the year preceding the date of the notice.

(iii) state that the failure to remove the structure may result in liability for a civil penalty under the Open Beaches Act, §61.018(c) in an amount specified, removal of the structure by the commissioner, and liability for the costs of removal, or any combination of these remedies;

(iv) state that the person may submit, not later than the 30th day after the date on which the notice is served, a written request for a hearing to contest the commissioner's findings. Provided, however, if the structure has been used as a permanent, temporary, or occasional residential dwelling by at least one individual at any time during the year before the date on which the notice is served, the person may submit, not later than the 90th day after the date on which the notice is served, a written request for a hearing. If the person does not make a timely request for a hearing, the person waives all rights to judicial review of the commissioner's findings or orders.

(B) The notice given by this subsection must be given in accordance with subsection (d) of this section. [~~given:~~]

[~~*(i)* by service in person, by registered or certified mail, return receipt requested, or by priority mail; or~~]

[~~*(ii)* if personal service cannot be obtained or the address of the person is unknown, by posting a copy of the notice on the structure and by publishing notice in a newspaper with general circulation in the county in which the structure is located at least two times within ten consecutive days.~~]

[~~(C) If the person requests a hearing, the commissioner must grant the hearing before an administrative law judge employed by the State Office of Administrative Hearings in accordance with procedures outlined in the Open Beaches Act, §61.0184(g).~~]

(7) If the person does not comply with a removal order of the commissioner or pay assessed penalties, removal costs, or other assessed fees and expenses on or before the 30th day after the date of entry of the final order, the commissioner may:

(A) contract for removal and disposal of the structure;

(B) sell salvageable parts of the structure to offset costs of removal;

(C) request that the attorney general institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses assessed because of the structure's placement on the public beach and the removal order by the commissioner; or

(D) use any combination of remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed because of the structure's placement on the public beach and the removal order by the commissioner.

(d) Notice of Violation and Hearing Requirements.

(1) Before the commissioner may order restoration or removal of a structure or assess administrative penalties under this section, the commissioner must give written notice and an opportunity to request a hearing to the person charged with the violation.

(2) The notice required by this subsection must be given:

(A) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(B) if personal service cannot be obtained or the address of the person is unknown, by:

(i) electronic mail if the electronic mail address is verifiable; or

(ii) posting a copy of the written notice at the site where the conduct was engaged in and by publishing notice in a newspaper with general circulation in the county in which the site is located at least two times within ten consecutive days.

(3) If the person requests a hearing, the commissioner must grant the hearing before an administrative law judge employed by the State Office of Administrative Hearings as provided in the Dune Protection Act, §63.1814 and the Open Beaches Act, §61.0184(g).

(4) The right to appeal an order is subject to Dune Protection Act, §63.151, and the Open Beaches Act, §61.0184(h).

§15.10. General Provisions.

(a) [~~Construction.~~] A local government's ordinances, orders, resolutions, or other enactments covered by this subchapter shall be read in harmony with this subchapter. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this subchapter controls. Certification of a local government's beach access and use plan by the General Land Office may not be construed to expand or detract from the statutory or constitutional authority of that local government or any other governmental entity, nor may any person construe such certification to authorize a local government or any other governmental entity to alienate public property rights in public beaches.

(b) Boundary of the public beach. The commissioner shall make determinations on issues related to the location of the boundary

of the public beach and encroachments on the public beach pursuant to the requirements of the Open Beaches Act, §§61.016 - 61.017 and §15.3(b) of this title (relating to Administration) and §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner). The General Land Office and the local governments may refer enforcement cases to [~~will consult with~~] the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

(c) Public beach presumption. Except for beaches on islands or peninsulas not accessible by public road or ferry facility, in administering its plan a local government shall presume that any beach fronting the Gulf of Mexico within its jurisdiction is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, §61.019. That section provides that any person owning property fronting the Gulf of Mexico whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(d) Violations. A violation of [~~No person shall violate~~] any provision of this subchapter, a local government dune protection and beach access plan, or any permit or certificate or the conditions contained therein will subject a person to the potential assessment of administrative or civil penalties. [~~therein.~~]

(e) Reporting violations. Any local government with knowledge of a violation or a threatened violation of a permit, a certificate, its dune protection and beach access plan, the Dune Protection Act, the Open Beaches Act, or this subchapter shall inform the General Land Office of the violation(s) within 24 hours.

(f) Withdrawal of plan certification. The General Land Office may withdraw certification of all or any part of a local government's dune protection and beach access plan if the local government does not comply with its plan, this subchapter, the Dune Protection Act, or the Open Beaches Act. Without further action by the General Land Office, a local government loses, by operation of law, the authority to issue permits or certificates authorizing construction within the geographic scope of this subchapter and the privilege to collect beach user fees if state agency certification of its dune protection and beach access plan is withdrawn.

(g) Notice of withdrawal of plan certification. The General Land Office will notify the local government [~~and the attorney general's office~~] 60 days prior to withdrawing [~~General Land Office~~] certification of the local government's plan. The local government may submit to the General Land Office any evidence demonstrating full compliance with its plan, this subchapter, the Dune Protection Act, and the Open Beaches Act. The General Land Office will consider the good faith efforts of any local government to immediately and fully comply with those laws during the 60-day period after the notification of intent to withdraw certification.

(h) The provisions contained in this subchapter do not limit the authority of the General Land Office and the attorney general's office to enforce this subchapter, the Dune Protection Act, and the Open Beaches Act pursuant to the Texas Natural Resources Code, §63.181 and §61.018.

(i) Appeals. The Dune Protection Act, §63.151, and the Open Beaches Act, §61.019, contain the provisions for appeals related to this subchapter.

[~~(j) Grandfathered plans. Nothing in the amendments shall require modifications of any dune protection and beach access plan certified on or prior to the effective date of these amendments. All permits and certificates shall be issued in accordance with the General Land Office rules for management of the beach/dune system as described in this chapter.~~]

§15.11. Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach.

(a) Purpose. The purpose of this section is to provide authority for local governments to issue permits or certificates for repairs to certain houses if any portion of the house is located seaward of the boundary of the public beach.

(b) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms [~~terms, as used in this section,~~] shall have the following meanings:

(1) Beach debris--Anything that is not native to the beach and beach/dune system, including but not limited to pilings, concrete, fibercrete, rebar, riprap, boulders, automobile parts, rubble mounds, damaged dune walkovers, garbage, septic systems, and other objects, that may pose a hazard to public health and safety and/or no longer serve the purpose for which they were originally intended.

(2) Boundary of the public beach--The landward edge of the public beach, as described in §15.3(b) of this title (relating to Administration) or an order issued under §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner). For purposes of this section, the location of the natural line of vegetation shall be determined by the General Land Office on a case-by-case basis. [~~The General Land Office may conduct a field investigation and may consult with the Bureau of Economic Geology of the University of Texas at Austin when making a determination under this section regarding the line of vegetation.~~]

(3) Habitable--The condition of the premises which permits the inhabitants to live free of serious hazards to health and safety.

(4) House--A single or multi-family structure that serves as permanent, temporary or occasional living quarters for one or more persons or families.

(c) Eligible houses. To find a house eligible for a permit or certificate to make repairs under this section, the Land Office must determine that:

(1) The line of vegetation establishing the boundary of the public beach has moved as a result of erosion or a meteorological event;

(2) The house was located landward of the line of vegetation before the erosion or meteorological event occurred;

(3) No portion of the house is located seaward of the boundary of coastal public land; [~~mean high tide;~~]

(4) The house was not damaged more than 50 percent or destroyed as the result of a meteorological event; and

(5) The house does not present an imminent threat to public health and safety.

(d) For a house eligible under this section, a local government may issue a certificate or permit authorizing repair of an eligible house if the local government determines that the repair:

(1) is solely to make the house habitable including reconnecting the house to utilities;

(2) does not increase the footprint of the house;

(3) does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the boundary of the public beach;

(4) does not include the construction of an enclosed space below the base flood elevation and seaward of the boundary of the public beach;

(5) does not include the repair, construction, or maintenance of an erosion response structure seaward of the boundary of the public beach;

(6) does not occur seaward of the boundary of coastal public land; and [~~mean high water;~~ ~~and~~]

(7) does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create an additional obstruction to public use of and access to the beach.

(e) Debris removal. Debris on the public beach creates a hazard to public health and safety and can threaten Gulf-facing properties. A local government shall coordinate with owners of eligible houses to remove personal property and beach debris related to the structure from the public beach and dune complex as soon as possible. The local government may require debris removal [~~possible~~] as a condition of the issuance of a certificate or permit under this section. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(f) Sand placement. Only beach-quality sand may be placed underneath the footprint of an eligible house and in an area up to five feet seaward of the house, provided that the sand may not be placed seaward of mean high tide except as part of an approved beach nourishment project. The beach-quality sand must remain loose and unconsolidated, and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(g) Land Office review. A local government shall submit the certificate or permit application for repair of an eligible house under this section to the commissioner for review and determination of eligibility as provided in subsection (b)(2) and (c) of this section. If the commissioner does not object to or otherwise comment on the application within ten working days of receipt of the application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make an affirmative determination regarding a permit or certificate for repairs. Local governments may require more information, but they shall submit to the Land Office the following information:

(1) the name, address, phone number, and, if applicable, [~~fax number or~~] electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(2) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(3) the floor plan, footprint or elevation view of the house identifying the proposed repairs;

(4) photographs of the site which clearly show the current conditions of the site; and

(5) an accurate map, site plan, plat or survey [~~drawing~~] of the site identifying:

(A) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(B) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways and landscaping that currently exist on the tract;

(C) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(D) the location of the house and the distance between the house and mean high tide, mean low tide, and the [~~natural~~] line of vegetation; and,

(E) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(h) Monitoring. A local government is responsible for monitoring the repair of an eligible house under this section. A local government may conduct a monitoring program to study the effects of permitting repairs to an eligible house on the public's access to and use of the public beach. Expenses related to the monitoring program are considered beach-related services for the purpose of this subchapter.

(i) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. Except as provided in an unexpired temporary order issued by the commissioner under §61.085 of the Texas Natural Resources Code, the commissioner, the attorney general, a county attorney, district attorney, or criminal district attorney may file suit under Texas Natural Resources Code §61.018(a) to obtain a temporary or permanent injunction, either prohibitory or mandatory, to remove a house from the public beach without regard to whether the house is eligible for repairs under this section.

§15.12. Temporary Orders Issued by the Land Commissioner.

(a) Purpose. The purpose of this section is to provide standards and procedures after a meteorological event for the temporary suspension under §61.0185 of the Texas Natural Resources Code of enforcement of the prohibition against encroachments on and interferences with the public beach easement and suspension under §61.0171 of the Texas Natural Resources Code of line of vegetation determinations where the natural line of vegetation has been obliterated. [~~obliterated as a result of a meteorological event.~~] This rule is promulgated under the authority of §61.011(d) of the Texas Natural Resources Code.

(b) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms, as used in this section, shall have the following meanings:

(1) Beach debris--Anything that is not native to the beach and beach/dune system, as described in §15.11(b) of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach. [~~including but not limited to pilings, concrete, fibercrete, rebar, riprap, boulders, automobile parts, rubble mounds, damaged dune walkovers, garbage, and other objects, that may pose a hazard to public health and safety and/or no longer serves the purpose for which it was originally intended.~~]

(2) Boundary of the public beach--The landward edge of the public beach, as described in §15.3(b) of this title (relating to Administration) or this section, or an order issued under this section or §15.13 of this title (relating to Disaster Recovery Orders).

[~~(3) The Code--The Texas Natural Resources Code.~~]

(3) [~~(4)~~] Habitable--The condition of the premises, as described in §15.11(b) of this title. [~~premises which permits the inhabitants to live free of serious hazards to health and safety.~~]

(4) [~~(5)~~] House--A single or multi-family structure, as described in §15.11(b) of this title. [~~structure that serves as permanent, temporary or occasional living quarters for one or more persons or families.~~]

(c) Any order issued by the commissioner under subsection (d) or (e) of this section shall be:

(1) posted on the General Land Office's Internet Web Site, www.glo.texas.gov;

(2) published by the General Land Office as a miscellaneous document in the *Texas Register;* and:

(3) filed by the General Land Office in the real property records of the county in which the structure is located if the order is for suspension of enforcement under subsection (d) of this section.

(d) Orders suspending enforcement of the prohibition against encroachments on and interferences with the public beach easement.

(1) An order for temporary suspension of enforcement under §61.0185 may be issued for a period of three years. While an order issued under this section is in effect, a local government may issue a certificate or permit authorizing repair of a house subject to the order if the local government determines that the repair:

(A) is solely to make the house habitable including reconnecting the house to utilities;

(B) does not increase the footprint of the house;

(C) does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the natural line of vegetation;

(D) does not include the construction of an enclosed space below the base flood elevation and seaward of the natural line of vegetation;

(E) does not include the repair, construction, or maintenance of an erosion response structure seaward of the natural line of vegetation;

(F) does not occur seaward of the boundary of coastal public lands; and [~~mean high water; and~~]

(G) does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create and additional obstruction to public use of and access to the beach.

(2) Debris on the public beach creates a hazard to public health and safety and can threaten Gulf-facing properties. The GLO is responsible for clearing debris from the public beach in accordance with Texas Natural Resources Code, §61.067. While an order issued under this section is in effect, a local government with the duty to clean and maintain the public beach shall coordinate with the GLO and, where appropriate, littoral property owners to remove beach debris from the public beach as soon as possible. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(3) While an order issued under this section is in effect, only beach-quality sand may be placed underneath the footprint of the house and in an area up to five feet seaward of the house. The beach-quality sand must remain loose and unconsolidated, and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(4) While an order issued under this section is in effect, a local government shall submit the certificate or permit application for repair of a house under this section to the commissioner for review. If the commissioner does not object to or otherwise comment on the application within ten working days of receipt of the application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make an affirmative determination regarding a permit or certificate for repairs. Local governments may require more information, but they shall submit to the Land Office the following information:

(A) the name, address, phone number, and, if applicable, [~~fax number or~~] electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(B) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(C) the floor plan, footprint, or elevation view of the house identifying the proposed repairs;

(D) photographs of the site that clearly show the current conditions of the site; and

(E) an accurate map, site plan, plat, or survey [~~drawing~~] of the site identifying:

(i) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(ii) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways, and landscaping that currently exist on the tract;

(iii) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(iv) the location of the house and the distance between the house and mean high tide, mean low tide, and the [~~natural~~] line of vegetation; and

(v) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(5) While an order issued under this section is in effect, a local government is responsible for monitoring the repair of the house under this section. Any permit or certificate issued by a local government under this order expires automatically on the date the order expires. Except as provided in §15.11 of the title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach), local governments may not issue permits or certificates for repairs to houses located on the public beach easement that are not subject to an order issued under this section.

(e) Orders suspending line of vegetation determinations where the line of vegetation has been obliterated as a result of a meteorological event.

(1) The commissioner may, by order, suspend action on conducting a line of vegetation determination for a period of up to three years from the date the order is issued if the commissioner determines that the line of vegetation was obliterated as a result of a meteorological event.

(2) For the duration of the order, the public beach shall not extend inland further than 200 feet from the seaward line of mean low tide as established by a licensed state land surveyor.

(3) While an order issued under this section is in effect, a local government may issue a certificate or permit based upon the boundary of the public beach [~~beach, as delineated by the commissioner under §15.13 of this title~~].

(4) Following the expiration of an order issued under this section, the commissioner shall make a determination regarding the line of vegetation in accordance with Texas Natural Resources Code, [~~the Code~~] §61.016 and §61.017, taking into consideration the effect of the meteorological event on the location of the public beach easement. The commissioner may consult with the Bureau of Economic Geology of The University of Texas at Austin or a licensed state land surveyor and consider other relevant factors when making a determination under this subsection regarding the annual erosion rate for the area of beach subject to the order issued under this section.

§15.13. Disaster Recovery Orders.

(a) Purpose. This section provides [~~is intended to provide~~] procedures for the commissioner to adopt a disaster recovery [~~implement by~~] order with [~~the use by a local government of~~] temporary standards for stabilization and repair of structures and dune restoration during a period of recovery following a [~~severely damaging~~] declared or natural disaster and to assist local governments in restoring beach access and dune protection.

(b) Applicability. This section applies only to a local government with a local dune protection and beach access plan within a coastal county that has been included in a disaster declaration made by the governor under §418.014, Texas Government Code or in which a natural disaster has occurred, as determined by the commissioner. [~~The temporary standards authorized by this section shall be effective for a period of two years from the date of the issuance of disaster recovery order by the commissioner, unless a shorter period of recovery is specified in the order.~~]

(c) Disaster recovery orders [~~order~~]. The commissioner may issue a disaster recovery order pursuant to this section to authorize temporary standards for stabilization and repair of structures, dune restoration, and other minimum measures needed to mitigate for adverse effects [~~effect~~] to the public beach, public access points, and dune areas caused by a damaging declared or natural disaster. The temporary standards authorized by this section shall be effective for a period of two years from the date of the issuance of disaster recovery order by the commissioner, unless a shorter period of recovery is specified in the order. [~~The disaster recovery order shall identify the nature of the disaster, the name of the disaster and the time and location of landfall (if applicable), any coastal county or counties to which the order applies, the date of issuance, and the expiration date. The order is effective upon issuance by the commissioner. Notice of the order issued under this section shall be:~~]

(1) The disaster recovery order shall identify the nature of the disaster, the name of the disaster and the time and location of landfall (if applicable), any coastal county or counties to which the order applies, the date of issuance, and the expiration date. The order is effective upon issuance by the commissioner.

(2) Notice of the order issued under this section shall be:

(A) [~~(1)~~] posted on the General Land Office's (GLO) Internet website;

(B) [~~(2)~~] published by the GLO as a miscellaneous document in the *Texas Register;* and

(C) [~~(3)~~] sent to the governing body of a local government to which the order applies.

(d) Conflict. The provisions of this section supplement the Beach/Dune Rules (§§15.1 - 15.12 of this title). However, if there is a conflict between this section and the provisions of the Beach/Dune Rules, this section applies.

(e) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms, as used in this section, shall have the following meanings:

(1) Beach debris--Anything that is not native to the beach and beach/dune system, as described in §15.11(b) of this title. [~~including but not limited to pilings, concrete, fibercrete, rebar, riprap, boulders, automobile parts, rubble mounds, damaged dune walkovers, garbage, septic systems, and other objects, that may pose a hazard to public health and safety and/or no longer serve the purpose for which they were originally intended.~~]

(2) Boundary of the public beach--The landward edge of the public beach, as described in §15.3(b) of this title (relating to Administration). For purposes of this section, the commissioner may provide local governments with a temporary standard that includes a demarcation of the landward boundary of the public beach based on the standards set forth in Texas Natural Resources Code Ch. 61 [~~a line of constant elevation to use~~] when issuing beachfront construction certificates and dune protection permits in locations where the [~~natural~~] line of vegetation has been severely damaged by the disaster that precipitated the recovery order.

(3) Coastal county--Any Texas county with a Gulf-facing beach within its boundaries.

[~~(4) Code--The Texas Natural Resources Code.~~]

(4) [~~(5)~~] Declared disaster--An event declared to be a disaster by the governor under §418.014, Texas Government Code.

[~~(6) Fibercrete--Unreinforced concrete, consisting of a combination of pulped paper, or other cellulose-based raw material, and binders such as lime, cement, and/or clay in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joints.~~]

(5) [~~(7)~~] Habitable--The condition of a premises, as described in §15.11(b) of this title. [~~the premises that permits the inhabitants to live free of serious hazards to health and safety.~~]

(6) [~~(8)~~] House--A single or multi-family structure, as described in §15.11(b) of this title. [~~structure that serves as permanent, temporary or occasional living quarters for one or more persons or families.~~]

(7) [~~(9)~~] Natural disaster--An event or force of nature that has catastrophic consequences, including, but not limited to, tropical storms, hurricanes, extreme high tides, tsunamis, earthquakes, tornadoes, and floods.

(8) [~~(10)~~] Recovery dune restoration--Those response measures that must be undertaken during a recovery period to construct a dune, repair a damaged dune, or stabilize an existing dune in order to minimize further threat or damage to coastal residents, structures [~~residents~~] and littoral property. [~~A local government shall require persons restoring dunes to use dune vegetation that will achieve the same protective capability as natural dunes in the area.~~]

(9) [~~(11)~~] Recovery period--A period of time commencing with the issuance of a disaster recovery order under this section and ending with the expiration of the order, during which temporary standards for stabilization and repair of structures and dune restoration are in effect.

(10) [~~(12)~~] Recovery repair--Those actions that must be undertaken to render a structure habitable or to prevent further damage during the recovery period. The term "recovery repair" does not include reconnecting a house to utilities such as sewer, water, and electricity. Reconnection to such utilities may only be made in accordance with other applicable law or local ordinances.

(11) [~~(13)~~] Recovery stabilization--Those actions that must be undertaken to stabilize a residential structure that is subject to collapse or substantial further damage as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels during a period of recovery from a disaster.

(12) [~~(14)~~] Restoration Area--With respect to a dune restoration project on the public beach, an area extending to the line of vegetation as delineated by the commissioner in an order under this subsection or an order issued under §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner).

(13) [~~(15)~~] Shoreline protection project repairs--Those response measures that must be undertaken during a period of recovery from a disaster to repair [~~restore~~] an existing shoreline protection project to a condition that affords protection from subsequent storms or tidal events or prevents accelerated damage to littoral property.

(f) Recovery repair and recovery stabilization of structures on the public beach.

(1) A local government may issue a certificate or permit in accordance with this section for recovery repair and recovery stabilization of a structure that encroaches or may encroach on the public beach to the extent necessary to prevent an immediate threat to public health, safety, and welfare.

(2) A local government may authorize construction of an enclosed space with breakaway or louvered walls at ground level that is consistent with the local dune protection and beach access plan and National Flood Insurance Program, if the foundation of the structure is intact.

(3) A local government may grant authorization in accordance with this section for recovery repair of a residential structure that encroaches or may encroach on the public beach, but only if the structure is an eligible house under §15.11 of this title [~~(relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach)~~] and is not subject to a pending enforcement action under this subchapter, the Open Beaches Act (Texas Natural Resources Code, Chapter 61), or the Dune Protection Act (Texas Natural Resources Code, Chapter 63). An enforcement action includes the filing of a suit in district court, the referral of a matter for enforcement to the attorney general or other public prosecutor, the initiation of an enforcement action by the commissioner, or the issuance of a citation by a local government for a violation of its dune protection and beach access plan.

(4) A local government may authorize the placement of beach-quality sand underneath the footprint of an eligible house and in the area up to a distance of not more than five feet from the structure's footprint where necessary to prevent further erosion due to wind or water. The beach-quality sand must remain loose and cannot be placed in bags.

(5) Clay or sandy clay may be placed to fill voids under the footprint of a residential structure seaward of the line of vegetation and beyond the footprint to the extent necessary to restore a natural angle of repose up to a distance of not more than five feet from the structure's footprint; provided, however, that clay or sandy clay used for this purpose must be covered with beach quality sand, where practicable, to a depth of at least 12 inches. Such actions are authorized in situations where protection of the land immediately seaward of a structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion.

(6) A local government may authorize the use of clay or sandy clay to fill voids in order to protect public infrastructure; provided, however, that clay or sandy clay sand used for this purpose must be covered with beach quality sand, where practicable, to a depth of at least 12 inches.

(7) Beach-quality sand, clay, or sandy clay must not be placed seaward of mean high tide without the consent of the commissioner.

(g) Authorized recovery dune restoration.

(1) A local government may issue a certificate or permit for persons to construct clay core dunes and dunes created solely with beach quality sand landward of the public beach and seaward of the boundary of the public beach in the restoration area. A local government shall ensure that the restoration area shall follow the natural meander or migration of the post-storm boundary of the public beach. A local government may issue permits and certification to allow the restoration of dunes on the public beach only under the following conditions:

(A) Restored dunes may be located farther seaward than the restoration area only to the limited extent necessary to minimize further damage to coastal residents and littoral property, provided such dunes shall not substantially restrict or interfere with the public use of the beach at normal high tide.

(B) A local government shall not allow any person to restore dunes, even within the restoration area, if such dunes would effectively prohibit access to or use of the public beach at normal high tide.

(2) Under no circumstances may sand or other materials be placed below mean high tide without the consent of the commissioner.

(h) Authorized methods and materials for recovery dune restoration. A local government may allow the following methods or materials for recovery dune restoration:

(1) Dune restoration methods or materials allowed in §15.7(e)(6) of this title (relating to Local Government Management of the Public Beach);

(2) Clay core dunes; provided, that clay or sandy clay used for this purpose must be covered with beach-quality sand, to a depth of at least 24 inches, and such sand cover must be maintained; provided, if clay is exposed, it must be recovered with sand to maintain the minimum 24-inch cover or removed; and [~~cover; and~~]

(3) Recovery dunes constructed under this section must not:

(A) result in increased flooding to the site or adjacent property;

(B) aggravate erosion;

(C) result in adverse effects to dune hydrology;

(D) increase the vulnerability to washouts or blowouts; or

(E) interfere with the public's access to the beach at normal high tide.

(4) A local government shall require persons using vegetation to restore dunes to use indigenous dune vegetation.

(i) Review of dune protection line. A local government having the authority to set the dune protection line shall review the dune protection line within one year from the date of the disaster recovery order issued under this section rather than 90 days required under §15.3(k) of this title. All other requirements of §15.3(k) of this title shall apply.

(j) Authorized beach access and dune protection measures.

(1) In areas [If a local beach access and dune protection plan includes a variance that permits the use of fibercrete] within 200 feet of the line of vegetation in an eroding area, the local government may:

(A) use the landward toe of a restored dune for determining the area in which the use of fibercrete is allowed [as provided in the variance] unless natural dunes form further landward. In eroding areas where there is no dune or the dune has been obliterated by the disaster that precipitated the order, the provisions of §15.6(f)(5) [§15.6(f)(3)] of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) apply until a restored dune has been established in the area as determined by a local government.

(B) allow construction underneath, outside, or around the house that includes fibercrete or other materials necessary to restore reasonable access to a house for disabled persons; provided that such access existed prior to the disaster that is the subject of an order under this section. This provision also applies to a house that has become located on the beach or where there is no dune.

(2) A local government may provide temporary access to beaches from off-beach parking areas by directing the public to the nearest existing pathways to minimize the effects on dunes and dune vegetation until dunes and walkovers are re-established or rebuilt. Temporary pathways shall be conspicuously marked as beach access paths.

(3) A local government may, without a plan amendment, temporarily close beach access points damaged beyond repair or temporarily blocked by emergency shore protection projects to prevent damage to infrastructure. In order to comply with this rule a local government must notify the commissioner in writing of the temporary closure of such damaged beach access point within 10 calendar days and specify the duration of the closure. The local government must ensure that the period of limited beach access in that area does not exceed the duration of the disaster recovery order and must submit to the commissioner a timeline for amending the local plan or a remedy to restore access no later than six months prior to the expiration of the disaster recovery order issued under this section.

(k) Shoreline protection project repairs. Except for [Notwithstanding] the general prohibition on maintaining or repairing erosion response structures in §15.6(d) of this title, a local government may authorize repairs to an existing shoreline protection project, subject to the following limitations:

(1) Repairs to existing shoreline protection projects may be permitted to minimize further damage to coastal residences and littoral property, provided the existing shoreline protection project does not substantially restrict or interfere with the public use and access of the beach at normal high tide;

(2) A local government shall not authorize any person to repair a shoreline protection project that is located below the boundary of coastal public land; and [mean high water; and]

(3) The existing shoreline protection project must conform to the policies of the General Land Office [Coastal Coordination Council] promulgated in §26.26(b) [§501.26(b)] of this title (relating to Policies for Construction in the Beach/Dune System).

(l) Prohibition on certain materials. A local government shall not allow any person to undertake dune restoration projects or temporary shoreline protection projects using any of the following methods or materials:

(1) Materials such as bulkheads, riprap, concrete (including sprayed concrete), or asphalt rubble, building construction materials, and any non-biodegradable items;

(2) Sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; or

(3) Sand obtained by scraping or grading dunes, or from beaches in eroding areas.

(m) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of State Health Services, or a local health department has made a determination that a sewage or septic system located on or adjacent to the public beach poses a threat to the health of the occupants of the property or public health, safety or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and (e)(1) of this title.

(n) Authorized beach maintenance practices. If a material change in conditions occurs, such as significant beach erosion caused by a declared or natural disaster, the commissioner may require a local government affected by an order issued under this section to suspend the authority of a permittee to scrape a beach under a previously issued beach maintenance permit. The local government may require a permittee to obtain a new permit incorporating beach maintenance practices consistent with the changed conditions. The commissioner shall be given an opportunity to comment on any such new permit application.

(o) Removal of beach debris. The GLO is responsible for clearing debris from the public beach in accordance with Texas Natural Resources Code, §61.067. While an order issued under this section is in effect, a local government with the duty to clean and maintain the public beach shall coordinate with the GLO and, where appropriate, littoral property owners to remove beach debris from the public beach as soon as possible. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill. [A local government or other authorized governmental entity with the duty to clean, maintain and clear debris from the public beach as provided by law shall coordinate with property owners to remove debris, including, but not limited to, pilings, concrete, fibercrete, pavers, and garbage from the public beach as soon as possible to minimize the threat of damage to public health, safety, welfare, and property.]

(p) GLO review. A local government shall submit the certificate or permit applications for recovery repair, recovery dune restoration, or any other activity authorized under this section to the commissioner for review. If the commissioner does not object to or otherwise comment on the application within ten working days of receipt of an application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate for repairs. Local governments may require more information, but the following information shall be submitted to the GLO:

(1) the name, address, phone number, and, if applicable, [~~fax number or~~] electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(2) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(3) the floor plan, footprint or elevation view of the house identifying the proposed repairs;

(4) color photographs of the site which clearly show the current conditions of the site; and

(5) an accurate map, site plan, plat or survey [~~drawing~~] of the site identifying:

(A) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(B) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways and landscaping that currently exist on the tract;

(C) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(D) the location of the house and the distance between the house and mean high tide, mean low tide, and the line of vegetation;

(E) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract; and

(F) if the proposed action includes a recovery dune restoration project, grading and layout plan identifying [~~all elevations (in reference to the National Oceanic and Atmospheric Administration datum),~~] existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade.

(6) the source of any sand and vegetation used for a recovery dune restoration project; and

(7) any other information requested by the local government or the GLO that is necessary to determine whether the application is consistent with this section.

(q) Monitoring. A local government is responsible for monitoring a recovery stabilization, recovery repair, recovery dune restoration project, or shoreline protection project repair under this section. A local government may conduct a monitoring program to study the effects of such projects on the public's access to and use of the public beach. Expenses related to the monitoring program are considered beach-related services for the purpose of this subchapter.

(r) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. Except as provided in an unexpired temporary order issued by the commissioner under §61.0185 of the Texas Natural Resources Code, the commissioner, the attorney general, a county attorney, district attorney, or criminal district attorney may file suit under Texas Natural Resources Code §61.018(a) to obtain a temporary or permanent injunction, either prohibitory or mandatory, to remove a house from the public beach without regard to whether the house is eligible for repairs under this section.

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

Filed with the Office of the Secretary of State on December 13, 2022.

TRD-202205005
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER D. OCCUPATION TAX ON SULPHUR PRODUCERS

34 TAC §3.41

The Comptroller of Public Accounts proposes the repeal of §3.41, concerning definition and due dates. The comptroller repeals this section to implement Senate Bill 757, 84th Legislature, 2015, effective September 1, 2015, which repealed Tax Code, Chapter 203, Sulphur Production Tax.

After filing the report and paying the sulphur production tax for the 2015 July and August production, due November 2, 2015, sulphur producers are no longer required to file a report and pay this tax. This period is now outside the four-year statute of limitations for assessments and refund claims. See Tax Code, §111.107(a) (When Refund or Credit Is Permitted) and §111.201 (Assessment Limitation).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed repeal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed repealed rule would benefit the public by updating the administrative code to the current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed repealed rule would have no significant fiscal impact on the state government, units of local government or individuals. There would be no significant anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This repeal is proposed under Tax Code, §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.

This repeal implements Tax Code, §203 (Sulphur Production Tax).

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§3.41. Definition and Due 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 December 16, 2022.

TRD-202205084
Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 475-2220

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.1

The Texas Department of Public Safety (the department) proposes amendments to §16.1, concerning General Requirements. The proposed rule amendment changes the date the department has established for adopting Title 49, Code of Federal Regulations (CFR) Part 383 by incorporation. This allows the department to incorporate recent federal rule changes through the new date proposed by this amendment. Another recent change to federal regulations allows a state to waive the requirement for a holder of a Class A commercial driver license to obtain a hazardous materials endorsement when transporting diesel under certain circumstances. The proposed rule amendment adds a reference to 49 CFR §383.3(i) to adopt this exception allowed by the recent change.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be clearer understanding of the hazardous materials endorsement exemption for certain drivers transporting diesel.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Charles McInnis, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005 and, §521.142(e-1), are affected by this proposal.

§16.1 General Requirements

(a) The Federal Motor Carrier Safety Administration (FMCSA) is the lead federal agency responsible for regulating states' commercial driver license (CDL) programs and providing safety oversight of commercial driver licensing and commercial motor vehicles (CMV). In accordance to the Federal Commercial Motor Vehicle Safety Act, Texas is mandated to follow all federal regulations governing commercial driver licensing. Failure to adhere to or deviating from these regulations can result in the decertification of Texas' CDL program, thereby prohibiting Texas from issuing commercial driver licenses to Texas residents and the withdrawal of federal highway funding in accordance to 49 CFR §§384.401, 384.403 and 384.405.

(b) All rules and regulations adopted in this chapter apply to every person, including employers of such persons, who holds a Texas CDL or operates a commercial motor vehicle (CMV) in this state, regardless if they are operating in interstate, foreign, or intrastate commerce.

(1) The department incorporates by reference and adopts:

(A) The Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations (CFR) Part 383 including all interpretations thereto, as amended through February 3, 2022 [~~May 1, 2019~~]. Where there is conflict between 49 CFR Part 383 and Texas Transportation Code, Chapter 522, Texas Transportation Code, Chapter 522 controls with the exception of the definition of CMV.

(B) 49 CFR §390.5--Definitions.

(C) 49 CFR §383.3(i)--related to hazardous materials endorsement exemption for certain drivers transporting diesel.

(2) The CFR permits states discretion to exempt or not exempt certain individuals from CDL standards, requirements, and penalties. The department, utilizing the discretion permitted by the CFR, does not adopt the CFR exemptions detailed in subparagraph (A) - (C) of this paragraph:

(A) 49 CFR §383.3(d)(3)--related to drivers employed by a local government for the purpose of removing snow and ice from roadways.

(B) 49 CFR §383.3(e)--related to certain restricted CDL issued in the State of Alaska.

(C) 49 CFR §383.3(g)--related to restricted CDL for certain drivers in the pyrotechnic industry.

(3) The Federal Commercial Motor Vehicle Safety Act and the CFR allows states to enact laws and regulations that are stricter than the federal requirements. The department does not adopt the CFR provisions detailed in subparagraph (A) and [~~subparagraph~~] (B) of this paragraph because Texas has enacted stricter requirements.

(A) 49 CFR §383.31(a)--related to the requirement that a person must notify the department upon conviction for a motor traffic control violation within 30 days after the date the person has been convicted. Texas Transportation Code, Chapter 522 requires the license holder to report the conviction within 7 days.

(B) 49 CFR §383.31(b)--related to the requirement that a person must notify his/her employer upon conviction for a motor traffic control violation within 30 days after the date the person has been convicted. Texas Transportation Code, Chapter 522 requires the license holder to report the conviction within 7 days.

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 December 16, 2022.

TRD-202205067
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 424-5848

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.17

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 421, Standards for Certification, concerning proposed amendment to §421.17, Requirement to Maintain Certification.

BACKGROUND AND PURPOSE

The purpose of the proposed title change is to reflect the new title of the head of agency.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

There is no impact on state and local government.

PUBLIC BENEFIT AND COST NOTE

There is no impact on public benefit and cost note.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

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

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will result in a decrease in fees paid to the agency by reducing the fees collected for certification renewals;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does

not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

There is no impact on costs to regulated persons.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to *amanda.khan@tcfp.texas.gov.*

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

CROSS REFERENCE TO STATUTE

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

§421.17. Requirement to Maintain Certification.

(a) All full-time or part-time employees of a fire department or local government assigned duties identified as fire protection personnel duties must maintain certification by the commission in the discipline(s) to which they are assigned for the duration of their assignment.

(b) In order to maintain the certification required by this section, the certificate(s) of the employees must be renewed annually by complying with §437.5 of this title (relating to Renewal Fees) and Chapter 441 of this title (relating to Continuing Education) of the commission standards manual.

(c) Except for subsection (d) of this section, or upon determination by the Agency Chief [~~Executive Director~~] when special circumstances are presented, an individual whose certificate has been expired for one year or longer may not renew the certificate previously held. To obtain a new certification, an individual must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification).

(d) A military service member whose certificate has been expired for three years or longer may not renew the certificate previously held. To obtain a new certification, the person must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification). In order to qualify for this provision, the individual must have been a military service member at the time the certificate expired and continued in that status for the duration of the three-year period.

(e) The commission will provide proof of current certification to individuals whose certification has been renewed.

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 December 16, 2022.

TRD-202205076
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 936-3841

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER B. [~~HIGHWAY IMPROVEMENT~~] CONTRACTS FOR HIGHWAY PROJECTS

43 TAC §§9.10 - 9.20, 9.23, 9.24, 9.26

The Texas Department of Transportation (department) proposes the amendments to §§9.10-9.20, 9.23, 9.24, and 9.26 concerning contracts for highway projects.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to Chapter 9, Subchapter B update the rules to reflect the recent amendment of Transportation Code, §223.001, as well as to align the rules with the current and updated business practices.

Transportation Code, Chapter 223 controls the department's low-bid contract letting and award process. Before 2019, §223.001 required the department to submit for competitive bids each contract for: (1) the improvement of a highway that is part of the state highway system; or (2) materials to be used in the construction or maintenance of that highway. Senate Bill 1092, 86th Legislature, Regular Session, 2019, amended §223.001 to add the procurement of traffic control and safety devices to be used on a highway to that list. Section 233.001 was amended by Senate Bill 1270, 87th Legislature, Regular Session, 2021, to allow flexibility in the purchase of some roadway materials and traffic control or safety devices using the State Purchasing and General Services Act.

During the formal process for revising the department's *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* it was determined that some changes to the current edition of that publication require rule changes before they can be made in the revised edition. Those necessary changes are made in this rulemaking.

This rulemaking also makes various non-substantive editing changes throughout the subchapter to correct grammatical errors and to provide clarity and consistency within Chapter 9, Subchapter B. Generally, the non-substantive changes will not be specifically addressed in this explanation of the amendments.

Amendments to the heading of Chapter 9, Subchapter B change the heading to "Contracts for Highway Projects" to better de-

scribe the subject of the subchapter after the amendments made by this rulemaking.

Amendments to §9.10, Purpose, add a new subsection (b). This new subsection sets out the option available to the department under Transportation Code, §223.001(c) for purchasing specified types of goods under the State Purchasing and General Services Act as an alternative to using the procedure provided under Chapter 9, Subchapter B for their purchase.

Amendments to §9.11, Definitions, add, delete, and amend various definitions used in the subchapter. The amendments delete the definitions of "construction contract," which is included in the definition of highway improvement contract, and delete "available bidding capacity" and move the meaning of the term to §9.12, the section of the rules in which it substantively used.

Definitions are added for "Materials contract," "Materials Supplier's Questionnaire," and "person." Because a bidder may or may not have entered into a contract with department and therefore, be a contractor with the department, the term "contractor" is updated to "person" throughout Chapter 9, Subchapter B to make this correlation.

Amendments to §9.12, Qualification of Bidders, clarify the requirements necessary to be eligible to bid on highway improvement contracts and on materials contracts. The materials suppliers should not be required to submit financial or project work experience information for the prequalification process. The financial or project work experience information of the supplier is not relevant to its ability to sell materials; therefore, there is low risk to the department related to that experience. However, forcing a supplier to submit a confidential or bidder's questionnaire could have large implications. These suppliers do not have the experience required by the current §9.12 to receive the bidding capacities needed for materials contracts. The Confidential Questionnaire is currently the only avenue to gain a large bidding capacity, and it is determined by the audited financial records.

A questionnaire is required, however, to enter suppliers into the Contractor Bidding System (CBS) for bidding. The Materials Supplier's Questionnaire gathers information such as company contact information, signature authority, and other federal and state requirements. This form is submitted to the department's Construction Division (CST) for review and approval, and then entered in CBS and Integrated Contractor Exchange (iCX). CST maintains the list of approved materials suppliers on www.txdot.gov.

New §9.12(a)(2)(E), adds the purchase of goods as an allowable waived project due to the simplicity of that type of contract. New §9.12(a)(3) states that approved materials suppliers will only be able to bid on material type contracts by submitting a Materials Supplier's Questionnaire. Any contractor or supplier that is qualified with either a Confidential or Bidder's Questionnaire will be able to bid on these material type contracts without having their bidding capacities affected on other highway improvement contracts.

In §9.12(c), "construction or maintenance contract" is changed to "highway improvement contract" since both types of contracts are highway improvement contracts. Additionally, in §9.12(c)(1)(B), "in this state" is deleted since it is no longer a requirement for financial records to be certified by a CPA firm that practices public accountancy in Texas only.

In §9.12(e), an addition clarifies that bidding capacity does not apply to materials or building contracts and that those types of contracts do not affect a bidder's bidding capacity. An explanation of how "available bidding capacity" is determined is moved to subsection (e)(6) from the definitions section.

In §9.12(g), language is added to limit to once per year affiliated entities ability to submit documentation for review establishing their independence. The affiliation review process is a four- to five-month process that is conducted by the department's Compliance Division and that includes site visits and financial, personnel, and equipment data review). Currently, a person who is denied an exception can immediately request another review even if there has been no change to the relationship or other affiliation criteria. Limiting to once a year would provide enough time for the contractors to make the necessary changes to get the affiliation removed.

Amendments to §9.13, Notice of Letting and Issuance of Bid Forms, replace "bid" with "proposal" to be in line with the terms currently used by the department. "Highway improvement" and "construction and maintenance" are deleted since this section applies for any applicable contract. Clarification is provided that only highway improvement projects have bidding capacities. Section 9.13(e)(1)(B), which lists the reasons for the department not issuing a proposal form to a bidder, is revised to conform to department practices. New §9.13(e)(1)(C) lists the reasons that the department will not issue a proposal form for the rebid of a contract; two rebidding prohibitions listed in existing 9.13(e)(1)(B) are moved to this new paragraph. Existing subsection (e)(1)(C) is redesignated as subsection (e)(1)(D), accordingly.

Amendments to §9.14, Submittal of Bid, clarify that the section applies to any contract subject to this subchapter. The amendments also clarify that a computer printout may not be used to manually submit a bid. The intent of the original language of this provision was to provide that a computer printout could be used as a means to submit only a bid item insert and not as a replacement for the bid document. If the current language were misinterpreted and a bidder were to substitute a computer printout for a proposal, the bid would be thrown out. The amendments clarify that a bid guaranty can be made payable to either the Texas Transportation Commission (commission) or the department. For electronic bids, the bid guaranty must reflect either the name or vendor number of the bidder or bidders. It is easy for a bidder to write an incorrect name but less likely a series of numbers. Adding the vendor number provides another option for bidder identification and reduces the chance of a bid not being accepted.

Amendments to §9.15, Acceptance, Rejection, and Reading of Bids, provide that all bids are read but subsection (b) lists bid responses that are considered nonresponsive and will not be considered. These updates include proposals that are not signed by an authorized signer, proposals incorrectly typed not using the appropriate bid price format, the bidder not meeting required technical qualifications, the bidder failing to submit a DBE commitment, and bidder failing to participate in E-Verify system.

In §9.15(b)(3), amendments clarify that bids by affiliated bidders will not be excluded if an affiliated exception was granted by the executive director. Changes to §9.15(d), clarify that written requests for withdrawing a manually submitted bid must be submitted to the letting official.

Amendments to §9.16, Tabulation of Bids, provide that an electronically submitted bid will prevail over a manually submitted bid to determine the total bid amount. This was a request by con-

tractors and administration since paper bids tend to have more errors and an electronic bid can be revised easier than a paper bid in the event a bidder's price changes. In §9.16(e), "commission" is changed to "department" since the department reviews and determines the bid error to make a recommendation to the commission.

Amendments to §9.17, Award of Contract, removes language stating that if the department enters into contract with the second lowest bidder, the low bidder may be considered in default. There are no damages to the department so there is no reason to declare the low bidder in default.

Amendments to §9.18, Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements, is amended to update insurance language on materials contracts to be similar to routine maintenance contracts, for which insurance is not needed until work begins. New §9.18(d), provides that materials contract providers are not required to purchase payment or performance bonds since a materials contract is not a public work contract; therefore, payment or performance bonds are not required under Government Code, §2253.021. Furthermore, in the Comptroller's Contract Management Guide, the Comptroller discourages the use of performance bonds unless there is a compelling need or statutory requirement, as a bond requirement may restrict competition, delay the award, and raise the cost of the contract.

Amendments to §9.19, Submittal of Bid, clarify when an emergency contract may be awarded. New subsection (j) provides that contractor performance evaluation requirements do not apply to emergency contracts because an emergency contract is not a low bid procured contract.

Amendments to §9.20, Partial Payments, provide that any contract entered into under Subchapter B may have partial payments.

Amendments to §9.23, Evaluation and Monitoring of Contract Performance, clarify the responsibilities for the evaluation of performance under the various types of contracts entered into under Chapter 9, Subchapter B. There is no substantive change made by the amendments to this section.

Amendments to §9.24, Evaluation and Monitoring of Contract Performance, establish the procedure under which materials contracts will be handled by the Performance Review Committee in the case of a default by the contractor.

Amendments to §9.26, Inclusion of Contract Remedies in Contracts, ensure that notice of possible contract remedies in the case of substandard performance is provided to the contractor on a materials contract.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect,

there will be no fiscal implications for state or local governments as a result of TxDOT or the Commission enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. James R. Stevenson, Director, Maintenance Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Stevenson has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be increased opportunities for small businesses to participate on department contracts.

COST ON REGULATED PERSON

Mr. Stevenson has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Stevenson has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would positively affect this state's economy due to an increase in department contract opportunities for small businesses.

TAKINGS IMPACT ASSESSMENT

Mr. Stevenson has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§9.10-9.20, §9.23, §9.24, and §9.26, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Highway Improvement Contracts Rules." The deadline for receipt of comments is 5:00 p.m. on

January 28, 2023. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.004, which authorizes the commission to adopt rules to prescribe conditions under which a bid may be rejected by the department; Transportation Code, §223.0041, which requires the commission to adopt rules awarding a maintenance contract to the second lowest bidder; Transportation Code, §223.005, which authorizes the commission to adopt certain rules relating to bids on contracts of less than $300,000; Transportation Code, §223.012, which requires the commission to adopt rules relating to contractor performance; and Transportation Code, 223.014, which requires the commission to adopt rules relating to a bid guaranty.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223, Subchapter A.

§9.10. Purpose.

(a) This [~~The sections under this~~] subchapter prescribes [~~prescribe~~] the policies and procedures governing bidder qualification, bidding, award, and execution of a contract entered under Transportation Code, Chapter 223, Subchapters A-C.

(b) As an alternative to using Transportation Code, Chapter 223, Subchapters A-C, and therefore, this subchapter, the department, if the department satisfies the requirements of Transportation Code, §223.001(c), may award under the State Purchasing and General Services Act, Subtitle D, Title 10, Government Code, a contract for certain materials to be used in the construction or maintenance of a highway or for traffic control or safety devices to be used on a highway as a purchase of goods.

§9.11. Definitions.

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

(1) Advertisement--The public announcement required by law inviting bids for work to be performed or materials to be furnished.

(2) Alternate bid item--A bid item identified by the department as an acceptable substitute for a regular bid item.

(3) Apparent low bidder--The bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the department.

[~~(4) Available bidding capacity--The contractor's approved bidding capacity less uncompleted work on department contracts.~~]

(4) [~~(5)~~] Award--The commission's acceptance of a [~~contractor's~~] bid for a proposed contract that authorizes the department to enter into a contract.

(5) [~~(6)~~] Bid--The offer of the bidder for performing the work described in the plans and specifications including any changes made by addenda.

(6) [~~(7)~~] Bid bond--The security executed by the bidder [~~contractor~~] and the surety furnished to the department to guarantee payment of liquidated damages if the bidder [~~contractor~~] fails to enter into an awarded contract.

(7) [~~(8)~~] Bidder--A person that submits [~~An individual, partnership, limited liability company, corporation, or joint venture submitting~~] a bid for a proposed contract.

(8) [~~(9)~~] Bidder's Questionnaire--A prequalification form, prescribed by the department, that reflects detailed equipment and experience data but waives audited financial data.

(9) [~~(10)~~] Bidding capacity--The maximum dollar value, as determined by the department, of all of the highway improvement contracts, other than building contracts, that a person [~~a contractor~~] may have [~~under contract~~] with the department at any given time.

(10) [~~(11)~~] Bid error--A mathematical mistake by the bidder in the unit bid price entered in the bid.

(11) [~~(12)~~] Bid guaranty--The security furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

(12) [~~(13)~~] Building contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or maintenance of a department building or appurtenant facilities. Building contracts are considered to be highway improvement contracts.

(13) [~~(14)~~] Certificate of insurance--A form approved by the department covering insurance requirements stated in the contract.

(14) [~~(15)~~] Certification of Eligibility Status form--A notarized form describing any suspension, voluntary exclusion, ineligibility determination actions by an agency of the federal government, indictment, conviction, or civil judgment involving fraud, official misconduct, each with respect to the bidder or any person associated with the bidder in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds, covering the three-year period immediately preceding the date of the qualification statement.

(15) [~~(16)~~] Commission--The Texas Transportation Commission or authorized representative.

(16) [~~(17)~~] Confidential Questionnaire--A prequalification form, prescribed by the department, reflecting detailed financial and experience data.

[~~(18) Construction contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or reconstruction of a segment of the state highway system.~~]

(17) [~~(19)~~] Department--The Texas Department of Transportation.

(18) [~~(20)~~] Disadvantaged business enterprise (DBE)--Has the meaning assigned by §9.202(4) of this chapter (relating to Definitions).

(19) [~~(21)~~] District engineer--The chief executive officer in each of the designated district offices of the department.

(20) [~~(22)~~] Electronic Bidding System (EBS)--The department's automated system that allows bidders to enter and submit their bid information electronically.

(21) [~~(23)~~] Electronic vault--The secure location where electronic bids are stored prior to bid opening.

(22) [~~(24)~~] Emergency--Any situation or condition of a designated state highway, resulting from a natural or man-made cause, that poses an imminent threat to life or property of the traveling public

or which substantially disrupts or may disrupt the orderly flow of traffic and commerce.

(23) [~~(25)~~] Executive director--The executive director of the Texas Department of Transportation or the director's designee not below the level of district engineer or division director.

(24) [~~(26)~~] Highway improvement contract--A contract entered into under Transportation Code, Chapter 223, Subchapter A, for the construction, reconstruction, or maintenance of a segment of the state highway system or for the construction or maintenance of a building or other facility appurtenant to a building. The term does not include a materials contract.

(25) [~~(27)~~] Historically underutilized business (HUB)--Has the meaning assigned by §9.352 of this chapter (relating to Definitions).

(26) [~~(28)~~] Joint venture--Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid.

(27) [~~(29)~~] Letting official--The executive director or any department employee empowered by the executive director to officially receive bids and close the receipt of bids at a letting.

(28) [~~(30)~~] Maintenance contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the maintenance of a segment of the state highway system. A maintenance contract is considered to be highway improvement contract.

(29) Materials contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the purchase of maintenance materials, traffic control devices, or safety devices, as described by Transportation Code, §223.001(b)(2) or (3).

(30) Materials supplier's questionnaire--A prequalification form, prescribed by the department, that gathers information, such as company contact, signature authority, and other requirements, to allow a person to bid on a materials contract.

(31) Materially unbalanced bid--A bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the state.

(32) Mathematically unbalanced bid--A bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

(33) Person--An individual, partnership, limited liability company, corporation, or joint venture.

(34) [~~(33)~~] Regular bid item--A bid item contained in a proposal [~~bid~~] form and not designated as an alternate bid item.

(35) [~~(34)~~] Routine maintenance contract--A maintenance contract that is [~~Contracts~~] let through the routine maintenance contracting procedure to preserve and repair roadways and rights of way, with all its components to its designed or accepted configuration.

(36) [~~(35)~~] Small business enterprise (SBE)--Has the meaning assigned by §9.302 of this chapter (relating to Definitions).

§9.12. Qualification of Bidders.

(a) Eligibility. To be eligible to bid on a highway improvement contract, other than a building contract, or on a materials contract [~~department contracts~~], potential bidders must satisfy the applicable requirements listed in this section. [~~All potential bidders must complete a Confidential Questionnaire or a Bidders Questionnaire.~~]

(1) If the department has accepted from a person [~~contractor~~] a properly completed Confidential Questionnaire, as described in subsection (c) of this section, and audited financial information, as described in subsection (b)(1) of this section, the person [~~contractor~~] is eligible to bid on any project for which the person [~~contractor~~] meets any necessary special technical qualification requirements, has sufficient available bidding capacity, as determined under subsection (e) of this section, and has submitted a properly completed a Certification of Eligibility Status form if it is a federal-aid project.

(2) A person [~~contractor~~] that has submitted only a Bidder's [~~Bidders~~] Questionnaire, as described in subsection (d) of this section, may bid only on a specified project for which the department has waived the requirements of paragraph (1) of this subsection. Such a project is referred to as a waived project and generally has one of the following characteristics:

(A) the engineer's estimate for the project is $300,000 or less;

(B) the project is a routine maintenance project;

(C) the project is an emergency project; [~~or~~]

(D) the project contains specialty items not normal to the department's roadway projects program; or

(E) the project is for the purchase of goods that may be purchased under a materials contract.

(3) A bidder that submits only a Materials Supplier's Questionnaire is eligible to bid only on a materials contract, including a materials contract awarded under §9.19 of this subchapter (relating to Emergency Contract Procedures).

(b) Financial Information. This section refers to three types of financial information.

(1) Audited financial information is information resulting from an examination of the accounting system, records, and financial statements by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial information in conformity with generally accepted accounting principles. A bidder that submits audited financial information, as required for a Confidential Questionnaire in accordance with subsection (c) of this section, is eligible to bid on all projects for which the bidder has available bidding capacity, as determined under subsection (e) of this section.

(2) Reviewed financial information may be used in a Bidder's [~~Bidders~~] Questionnaire under subsection (d) of this section. The scope of reviewed financial information is substantially less than audited financial information, and the information is the result primarily of inquiries of company personnel and analytical procedures applied to financial data by an independent certified public accountant. Only negative assurance is expressed by the independent accountant, which means that the independent accountant is not aware of any material modifications that should be made in order for the financial information to conform to generally accepted accounting principles. A bidder that submits reviewed financial information is subject to the limitations described in subsections (d) and (e) of this section for a waived project.

(3) Compiled financial information also may be used in a Bidder's [~~Bidders~~] Questionnaire under subsection (d) of this section. Compiled financial information only presents information that is the representation of management. No opinion or other assurance is expressed by the independent accountant. A bidder that submits compiled

financial information is subject to the limitations described in subsections (d) and (e) of this section for a waived project.

(c) Confidential Questionnaire. A potential bidder must satisfy the requirements of this subsection to be eligible to bid on a highway improvement [~~construction or maintenance~~] contract, except as provided by subsection (d) of this section.

(1) A potential bidder must:

(A) submit [~~a Confidential Questionnaire~~] to the department's Construction Division in Austin 10 days prior to the last day of bid opening a Confidential Questionnaire that includes[~~, in a form prescribed by the department, which shall include certain~~] information, as required by the department, concerning the bidder's equipment and experience as well as financial condition;

(B) have a certified public accountant firm that is licensed to practice public accountancy [~~in this state~~] prepare the audited and any other financial information required by the department;

(C) satisfactorily comply with any technical qualification requirements determined by the department to be necessary for a specific project; and

(D) properly complete the Certification of Eligibility Status form contained in the Confidential Questionnaire for the purpose of bidding on federal-aid projects.

(2) Information adverse to the potential bidder contained in the Certification of Eligibility Status form will be reviewed by the department and the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids.

(3) Satisfactory audited financial information will grant a 12-month period of qualification from the date of the financial statement.

(4) A three month grace period of qualification, for the purpose of preparing and submitting current audited information, will be granted prior to the expiration date of the financial statement.

(5) The department may require current audited information at any time if circumstances develop which are factors that could alter the potential bidder's [~~firm's~~] financial condition, ownership structure, affiliation status, or ability to operate as an on-going concern.

(d) Bidder's [~~Bidders~~] Questionnaire; Materials Supplier's Questionnaire. To be eligible to bid on a contract under this subsection or on a contract to be awarded under §9.19 of this subchapter (relating to Emergency Contract Procedures), a bidder must:

(1) submit [~~a Bidders Questionnaire~~] to the department's headquarters office in Austin 10 days prior to the date the bid opens, a Bidder's Questionnaire that [~~in a form prescribed by the department, which~~] includes [~~certain~~] information, as required by the department, concerning a bidder's equipment and experience or for a materials contract, a bidder may submit a Materials Supplier's Questionnaire instead of a Bidder's Questionnaire;

(2) submit unaudited and other data as required in the instructions to the questionnaire submitted under paragraph (1) of this subsection [~~Bidders Questionnaire~~];

(3) satisfactorily comply with any technical qualification requirements determined by the department to be necessary on a specific project; and

(4) for a federal-aid project, properly complete the Certification of Eligibility Status form contained in the questionnaire submitted under paragraph (1) of this subsection [~~Bidders Questionnaire~~]. Information adverse to the potential bidder contained in the certification will be reviewed by the department and by the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids on a federal-aid project.

(e) Bidding capacity; available bidding capacity. The department will make its examination and determination based on the information submitted under subsection (c) or (d) of this section, as appropriate, and advise the bidder of its [~~approved~~] bidding capacity.

(1) For a bidder submitting a Confidential Questionnaire and audited financial information, the amount of the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based on the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. If this calculation results in a positive amount that is not greater than $1,000,000, the bidder will receive a bidding capacity of $1,000,000 if the bidder has positive net working capital and the bidder provides documentation of at least two years' experience and four completed projects in the field in which the bidder wishes to bid. Bidding capacity determined under this paragraph applies for any project and is not limited to waived projects.

(2) For a bidder submitting a Bidder's Questionnaire with no prior experience in construction or maintenance, or a negative working capital position (i.e., financial statements indicate that current liabilities exceed current assets), will receive a bidding capacity of $300,000 for waived projects only.

(3) For a bidder submitting a Bidder's [~~Bidders~~] Questionnaire and compiled financial information if the principals of the bidder have at least one year experience in construction or maintenance and have satisfactorily completed at least two projects in these fields, the bidding capacity is $500,000 for waived projects only.

(4) For a bidder submitting a Bidder's [~~Bidders~~] Questionnaire and compiled financial information and the principals of which have at least two years' [~~years~~] experience in construction or maintenance and have satisfactorily completed at least four projects in these fields, the bidding capacity is $1,000,000 for waived projects only. Those bidders [~~contractors~~] possessing more than two years' [~~years~~] experience will be granted an additional $250,000 in bidding capacity for each additional year of experience in construction or maintenance, with a maximum bidding capacity of $3,000,000 for waived projects only.

(5) For a bidder submitting a Bidder's [~~Bidders~~] Questionnaire and reviewed financial information and the principals of which have at least three years of experience in construction or maintenance and have satisfactorily completed at least six projects in these fields, the amount of the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based upon the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. In the event that this calculation does not result in an amount greater than $1,000,000, the bidder will receive a bidding capacity of $1,000,000. Bidding capacity determined under this paragraph is limited to waived projects only.

(6) A bidder's available bidding capacity is determined by the department by subtracting from the bidder's bidding capacity the amount of the estimated cost of the bidder's uncompleted work on department contracts. Bidding capacity does not apply to a materials contract or building contract and an uncompleted materials or building contract does not affect the bidding capacity or available bidding capacity of a bidder.

(f) Effect of contract performance. A person's [~~firm's~~] bidding capacity or eligibility to bid on a highway improvement contract may

be affected by a decision of the deputy executive director under §9.24 of this chapter (relating to Performance Review Committee and Actions).

(g) Affiliated entities. [~~In making examinations and determinations under this section, the department will make a determination of bidder affiliations.~~] Bidders that the department determines are affiliated are not eligible to submit bids for the same project. A bidder that is determined to be affiliated but that can establish independence from the other affiliated bidders may request, in accordance with this subsection, an exception to its ineligibility. Such a request may be made only once during any 12-month period.

(1) For purposes of this subchapter:

(A) two or more bidders are affiliated if:

(i) the bidders share common officers, directors, or controlling stockholders;

(ii) a family member of an officer, director, or controlling stockholder of one bidder serves in a similar capacity in another of the bidder;

(iii) an individual who has an interest in, or controls a part of, one bidder either directly or indirectly also has an interest in, or controls a part of, another of the bidders ;

(iv) the bidders are so closely connected or associated that one of the bidders, either directly or indirectly, controls or has the power to control another bidder;

(v) one bidder controls or has the power to control another of the bidders; or

(vi) the bidders are closely allied through an established course of dealings, including but not limited to the lending of financial assistance; and

(B) a family member of an individual is the individual's parent, parent's spouse, step-parent, step-parent's spouse, sibling, sibling's spouse, spouse, child, child's spouse, spouse's child, spouse's child's spouse, grandchild, grandparent, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, or first cousin's spouse.

(2) To request the exception to the department's finding of affiliation, a bidder must submit to the executive director a written request explaining the basis for the exception accompanied by supporting evidence, including an affidavit affirming that the bidder is independent from and not coordinating with the affiliates or any other bidder. The written request must be received not later than the 30th day before the date of the bid opening for which the exception is requested.

(3) The department will review the request and supporting evidence provided to determine the affiliation or independence of the potential bidders. The department will consider, in addition to other affiliation criteria:

(A) transactions between the potential bidders; and

(B) the extent to which the potential bidders share:

(i) equipment;

(ii) personnel;

(iii) office space; and

(iv) finances.

(4) If the department finds that the bidders are independent, the director of the division reviewing the request will recommend to the executive director that the requesting bidder be granted an exception.

(5) The executive director will review the request, supporting evidence, and department's recommendation and will make the final determination on the request. The executive director will send to the bidder the final written determination. An exception granted to the bidder remains in effect for future bid openings unless the exception is revoked under paragraph (6) of this subsection.

(6) The granting of an exception under this subsection does not remove the classification of the bidders as affiliated. The department reserves the right to conduct follow-up reviews and revoke the exception if the follow-up reviews indicate that the bidders are no longer independent. A bidder's failure to act independently of its affiliates or other bidder during the period it was granted an exception under this subsection may result in the imposition of sanctions.

(7) If bidders classified as affiliates submit bids on the same project, the department reserves the right to reject all bids on that project and relet the contract.

(8) Affiliated bidders that are granted an exception under this subsection and that have been sanctioned in accordance with Chapter 10 of this title must meet the exception criteria in that chapter to be eligible to bid.

(h) Building contracts. To be eligible to bid on a building contract, a potential bidder must satisfactorily comply with any financial, experience, technical, or other requirements contained in the governing specifications applicable to the project.

§9.13. Notice of Letting and Issuance of Proposal [~~Bid~~] Forms.

(a) Notice to Contractors. A person may apply to have his or her name placed on a list to receive the Notice to Contractors electronically.

(b) Application for notice. The following entities will receive the Notice to Contractors:

(1) qualified bidders approved under §9.12 of this subchapter (relating to Qualification of Bidders);

(2) disadvantaged business enterprises and historically underutilized businesses; and

(3) organizations performing work under supportive service contracts awarded by the commission.

(c) Notice of Bids. The department will advertise contracts on the Electronic State Business Daily maintained and operated by the Comptroller of Public Accounts.

(d) Proposal [~~Bid~~] form.

(1) Proposal [~~Bid~~] form content. A proposal [~~bid~~] form may include:

(A) the location and description of the proposed work;

(B) an approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed; and

(E) the special provisions and special specifications.

(2) Form of request. A request for a proposal [~~bid~~] form on any [~~a highway improvement~~] contract under this subchapter should be made using the department's electronic system. On the written or emailed request of a contractor, the department may enter a form re-

quest into the system on behalf of the contractor if the requester is identified as the person authorized to sign for the contractor.

(e) Issuance of proposal [~~bid~~] form.

(1) This paragraph applies for contracts under this subchapter other than building [~~Construction and maintenance~~] contracts.

(A) Issuance. Except as provided in [~~where prohibited under~~] subparagraph (B) or (C) of this paragraph or paragraph (3) of this subsection, the department will, upon receipt of a request, issue a proposal [~~bid~~] form for a [~~construction or maintenance~~] contract only to a bidder who qualifies under §9.12(c) or (d) of this subchapter, as appropriate, and for a highway improvement project, only if the estimated cost of the project is within that bidder's available bidding capacity, as determined under §9.12(e) of this subchapter.

(B) Non-issuance. Except as provided in subparagraph (D)[~~(C)~~] of this paragraph, the department will not issue a proposal [~~bid~~] form requested by a bidder for a [~~construction or maintenance~~] contract if at the time of the request the bidder:

~~*(i)* is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project;~~

(i) [~~(ii)~~] is suspended or debarred by order of the commission or by the department ;

~~*(iii)* is prohibited from rebidding a specific project because of default of the first awarded contract;~~

(ii) [~~(iv)~~] has not fulfilled the requirements for qualification under §9.12 of this subchapter;

(iii) does not have the available bidding capacity;

(iv) is ineligible to bid on any proposed contract under Item 7, Article 15, Responsibility for Damage Claims of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges;

~~*(v)* is prohibited, or an affiliate of the bidder is prohibited, from rebidding that project as a result of having previously submitted a bid that led to the department re-letting the project; or~~

(v) [~~(vi)~~] is prohibited from participating in the contract because of a decision of the Deputy Executive Director under §9.24 of this chapter (relating to Performance Review Committee and Actions); or

(vi) has not attended a mandatory pre-bid conference.

(C) Non-issuance for rebid. The department will not issue a proposal form requested by a bidder for the rebid of a contract if:

(i) at the time of the request the bidder is prohibited from rebidding the proposal due to a bid error on the original proposal form;

(ii) the bidder failed to enter into a contract on the original award;

(iii) at the time of the request the bidder is in default on the original contract or was terminated on the original contract unless the department terminated the contract in the best interest of the state; or

(iv) the bidder or an affiliate of the bidder was originally determined to be the apparent low bidder on a project but failed to submit a DBE commitment as required by §9.227 of this chapter (relating to Information from Bidders) or failed to meet the requirements of §9.17(j) of this subchapter relating to participation in the Department of Homeland Security (DHS) E-Verify system.

(D) [~~(C)~~] Exceptions. The department may issue a proposal [~~bid~~] form[~~:~~

~~*(i)*~~ under a temporary approval to a bidder who would be ineligible under subparagraph (B)(ii) [~~(B)(iv)~~] of this paragraph if the bidder has substantially complied with the requirements of §9.12 of this subchapter. [~~; or~~

~~*(ii)* to a bidder who would be ineligible under subparagraph (B)(v) of this paragraph if the bidder holds an exception to ineligibility granted under §9.12(g) of this subchapter.~~]

(2) This paragraph applies only for building [~~Building~~] contracts.

(A) Issuance. Except as provided in subparagraph (B) of this paragraph or paragraph (3) of this subsection, the department will issue, upon request, a proposal [~~bid~~] form to a bidder that is eligible under [~~having complied with~~] §9.12(h) of this subchapter.

(B) Non-issuance. The department will not issue a proposal [~~bid~~] form requested by a bidder for a building contract if, at the time of the request, the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits and the contract is a federal-aid project;

(ii) is suspended or debarred by order of the commission or by the department; or

(iii) is prohibited from bidding that project because of default of the first awarded contract.

(3) All contracts. The department will not issue a proposal [~~bid~~] form for a [~~highway improvement~~] contract under this subchapter to a bidder if the bidder or a subsidiary or affiliate of the bidder has received compensation from the department to participate in the preparation of the plans or specifications on which the bid or contract is based.

§9.14. Submittal of Bid.

(a) Acceptable methods. Bids for a contract under this subchapter [~~department highway improvement contracts~~] may be submitted either manually or electronically.

(b) Manually submitted bids. For the purpose of manually submitting a bid, an acceptable proposal [~~bid~~] form is the form that is printed and given to the bidder by the department[~~, a computer printout that meets the requirements of paragraph (3) of this subsection,~~] or a form printed by the bidder from EBS.

(1) Delivery of Bid. The bidder shall place each completed proposal [~~bid~~] form in a sealed envelope marked to show its contents. When submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received on or before the hour and date set for the receipt and opening of bids and must be in the hands of the department letting official by that time.

(2) Bid content. The bidder shall submit the bid in compliance with the following requirements.

(A) Except as provided in subparagraph (B) of this paragraph and paragraph (3) of this subsection, the blank spaces for

each item as required in the proposal [~~bid~~] form shall be filled in by writing in words in ink.

(B) The bidder shall submit a unit price for each item for which a bid is requested (including a zero if appropriate), except in the case of a regular bid item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates.

(C) The bid shall be executed with ink in the complete and correct name of the bidder making the bid and be signed by the person or persons authorized to bind the bidder.

(D) Except in the case of a regular bid item that has an alternate bid item, unit prices shall be stated in dollars and/or cents for each bid item listed in the proposal [~~bid~~] form.

(3) Computer printouts.

(A) For manually submitted bids, a bidder may, in lieu of writing in words in ink on the bid item sheet, submit an original computer printout sheet bearing the authorized signature for the bidder. The unit prices shown on acceptable printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded by the commission.

(B) Computer printouts are not acceptable on building contracts.

(c) Electronically submitted bids. In lieu of submitting a printed proposal [~~bid~~] form, the bidder may submit the bid electronically using EBS in accordance with this subsection.

(1) Bids must be received by the electronic vault on or before the time and date set for the receipt and opening of bids.

(2) For the submission or withdrawal of electronic bids, the bidder is responsible for obtaining its use of a computer system and access to the Internet.

(3) The department is not responsible for a bidder being unable to submit or withdraw a bid due to the unavailability of the Internet.

(4) The bid shall be in the correct name of the bidder making the bid.

(d) Bid guaranty. Except as provided in paragraph (4) of this subsection, a bidder must submit a bid guaranty with the bid for a contract that, on the date of the release of its advertisement, has an engineer's estimate of more than $25,000. The amount of the guaranty is equal to two percent of the estimate, rounded to the nearest $1,000, not to exceed $100,000.

(1) Except as provided in paragraph (2) or (4) of this subsection, the bid guaranty must be made payable to the order of the commission or department and in the form of a cashier's check, money order, or teller's check drawn by or on a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as a "bank"). The check must be payable at or through the institution issuing the instrument, or must be drawn by a bank on a bank, or by a bank and payable at or through a bank. The form of the instrument must be identified on the instrument's face.

(2) A bidder may submit a bid bond, in lieu of providing the guaranty required in paragraph (1) of this subsection. The bid bond shall be on the form specified by the department. A bid bond will only be accepted from a surety company authorized to execute a bond under and in accordance with state law. The bond must be dated on or before the date of the bid opening, bear the impressed seal of the surety company and the name of the bidder, and be signed by the bidder or bidders, in the case of a joint venture, and an authorized representative of the surety company. As an alternative for joint venture bidders, each of the bidders may submit a separate bid bond, completed as outlined in this paragraph. Powers of attorney must be attached to the bid bond. The bid bond amount required by the department must be within the surety company's authorized bonding limit.

(3) The department will not accept as a bid guaranty:

(A) personal checks or certified checks;

(B) other types of money orders; or

(C) checks or money orders more than 90 days old.

(4) For bids submitted electronically under subsection (c) of this section, the bid guaranty must be an electronic bid bond must be made in the name or department issued vendor number of the bidder or if more than one, each bidder [~~the form of which must be the most current version issued by the department~~]. For joint venture bidders, the bond must be made in the names or department issued vendor numbers [~~name~~] of all joint venture bidder participants. The bond authorization code must be entered into the authorization code field contained in EBS. Only bond authorization codes from the companies listed in the most recent version of EBS are acceptable. Printed checks or bid bond forms are not acceptable as guaranties for electronic bids.

§9.15. Acceptance, Rejection, and Reading of Bids.

(a) Public reading. Bids will be opened and read in accordance with Transportation Code, §223.004 and §223.005. Bids for contracts with an engineer's estimate of less than $300,000 may be filed with the district engineer at the headquarters for the district, and opened and read at a public meeting conducted by the district engineer, or his or her designee on behalf of the commission.

(b) Bids not considered [~~read~~].

(1) The department will not consider [~~accept and will not read~~] a bid if:

(A) the bid is submitted by an unqualified bidder;

(B) the bid is in a form other than the official bid form issued to the bidder;

(C) the certification and affirmation are not signed;

(D) the bid was not in the hands of the letting official at the time and location specified in the advertisement;

(E) the bidder modifies the bid in a manner that alters the conditions or requirements for work as stated in the proposal form [~~bid~~];

(F) the bid guaranty, when required, does not comply with §9.14(d) of this subchapter;

(G) the proposal form was signed by a person who was not authorized to bind the bidder or bidders [~~did not attend a specified mandatory pre-bid conference~~];

(H) the bid does not include a fully completed HUB plan in accordance with §9.356 of this chapter when required;

(I) a typed proposal form [~~computer printout bid, when used,~~] does not contain the information in the format shown on the "Example of Bid Prices Submitted by a Computer Printout" in the proposal form [~~have the unit bid prices entered in designated spaces, is not signed in the name of the firm or firms to whom the bid was issued, or omits required bid items or includes items not shown in the bid~~];

(J) the bidder was not authorized to be issued a bid form under §9.13(e) of this subchapter;

(K) the bid did not otherwise conform with the requirements of §9.14 of this subchapter;

(L) the bidder fails to properly acknowledge receipt of all addenda;

(M) the bid submitted has the incorrect number of bid items; [~~or~~]

(N) the bidder does not meet the applicable technical qualification requirements;

(O) the bidder fails to submit a DBE commitment within the period described by §9.17(i) of this subchapter;

(P) the bidder fails to meet the requirements of §9.17(j) of this subchapter relating to participation in the Department of Homeland Security (DHS) E-Verify system; or

(Q) [~~(N)~~] the bidder bids more than the maximum or less than the minimum number of allowable working days shown on the plans when working days is a bid item.

(2) If bids are submitted on the same project separately by a joint venture and one or more members of that joint venture, the department will not accept and will not read any of the bids submitted by the joint venture and those members for that project.

(3) If bids are submitted on the same project by affiliated bidders as determined under §9.12(g) of this subchapter and the executive director has not granted an affiliation exception under that subsection, the department will not accept and will not read any of the bids submitted by the affiliated bidders for that project.

(c) Revision of bid.

(1) For a manually submitted bid, a bidder may change a bid price before it is submitted to the department by changing the price in the printed bid form and initialing the revision in ink;

(2) For a manually submitted bid, a bidder may change a bid price after it is submitted to the department by requesting return of the bid in writing prior to the expiration of the time for receipt of bids, as stated in the advertisement. The request must be made by a person authorized to bind the bidder. The department will not accept a request by telephone or telegraph, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

(3) For an electronically submitted bid, a bidder may change a unit bid price in EBS and resubmit electronically to the electronic vault until the time specified for the close of the receipt of bids. Each bid submitted will be retained in the electronic vault. The electronic bid with the latest date and time stamp by the vault will be used for bid tabulation purposes.

(d) Withdrawal of bid.

(1) A bidder may withdraw a manually submitted bid by submitting a request in writing to the letting official before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder. The department will not accept telephone or telegraph requests, but will accept a properly signed facsimile request. Except as provided in §9.16(c) of this subchapter and §9.17(d) of this subchapter, a bidder may not withdraw a bid subsequent to the time for the receipt of bids.

(2) A bidder may withdraw an electronically submitted bid by submitting an electronic or written request to withdraw the bid. An electronic withdrawal request must be submitted using EBS. The request, whether electronic or written, must be submitted by a person who is authorized by the bidder to submit the request and received by the department before the time and date of the bid opening.

(e) Unbalanced bids. The department will examine the unit bid prices of the apparent low bid for reasonable conformance with the department's estimated prices. The department will evaluate a bid with extreme variations from the department's estimate, or where obvious unbalancing of unit prices has occurred. For the purposes of the evaluation, the department will presume the same retainage percentage for all bidders. In the event that the evaluation of the unit bid prices reveals that the apparent low bid is mathematically and materially unbalanced, the bidder will not be considered in future bids for the same project.

§9.16. Tabulation of Bids.

(a) Official bid amount. Except for lump sum building contract bid items, the official total bid amount for each bidder will be determined by multiplying the unit bid price written in for each item by the respective quantity and totaling those amounts.

(b) Department interpretations.

(1) Bids where unit bid prices have been left blank will be considered by the department to be incomplete and nonresponsive. If a bid has a regular and a corresponding alternate bid item or group of items, the bid will not be considered to be incomplete if either the regular bid item, or group of items, or the alternate bid item, or group of items, has a unit bid price entered. If both a regular bid item, or group of items, and a corresponding alternate bid item, or group of items, are left blank, the bid will be considered to be incomplete and nonresponsive. A bidder who elects to bid on a bid item group corresponding to a regular or alternate bid item, or group of items, must include unit bid prices for each bid item contained in the bid item group.

(2) Bid entries such as no dollars and no cents, zero dollars and zero cents, or numerical entries of $0.00 will be interpreted to be one-tenth of a cent ($.001) and will be entered in the bid tabulation as $.001, except as provided in paragraph (6) of this subsection. Any entry extended to more than three decimal places will be rounded to the nearest tenth of a cent and entered as such. For rounding purposes contained in this subsection, entries of five-hundredths of a cent or more will be rounded up to the next highest tenth of a cent, while entries of four-hundredths of a cent or less will be rounded down to the next lowest tenth of a cent.

(3) If the bidder submits both an electronic bid and a properly completed manual bid, the department will use the electronic [~~manually submitted~~] bid to determine the total bid amount of the bid. If the bidder submits an electronic bid and a manual bid that is not complete, the department will use the electronic bid to determine the total bid amount of the bid.

(4) If the bidder submits two or more manual bids, all responsive manual bids will be tabulated, and the department will use the lowest bid tabulation to determine the total bid amount of the bid.

(5) If a unit bid price is illegible, the department will make a documented determination of the unit bid price for tabulation purposes.

(6) If a unit bid price has been entered for both the regular bid item, or group of items, and a corresponding alternate bid item, or group of items, the department will determine the option that results in the lowest total cost to the state and tabulate as such, except as provided in subparagraphs (A) and (B) of this paragraph. If both the regular and alternate bids result in the same cost to the state, the department will select the regular bid item or items.

(A) If both a regular bid item or a group of items, and a corresponding alternate bid item or group of items, have an entry such

as no dollars and no cents, zero dollars and zero cents, or numerical entries of $0.00, the department will make two calculations using one-tenth of a cent ($.001) for each item as described in paragraph (2) of this subsection. The department will determine the option that results in the lowest total cost to the state and tabulate as such. If both the regular and alternate bids result in the same cost to the state, the department will select the regular bid item or items.

(B) If a unit bid price greater than zero has been entered for either a regular bid or corresponding alternate bid item, or a group of items, and an entry of no dollars and no cents, zero dollars and zero cents, or a numerical entry of $0.00 has been entered for the other corresponding item, or group of items, the department will use the unit bid price that is greater than zero for bid tabulation.

(c) Tie bids. In the event the official bid amount for two or more bidders is equal and those bids are the lowest submitted, each tie bidder will be given an opportunity to withdraw its bid. If two or more tie bidders decline to withdraw their bids, the low bidder will be determined by a coin toss. If all tie bidders request to withdraw their bids, no withdrawals will be allowed and the low bidder will be determined by a coin toss.

(d) Bid guaranty. Not later than 72 hours after bids are opened, the department will mail the check or money order bid guaranty of each bidder except the apparent low bidder to the address specified on the return bidder's check form included in the bid. Bid bonds will not be returned.

(e) Bid errors. The department [~~commission~~] will consider a bid error that meets the notification requirements contained in paragraph (1) of this subsection and satisfies the criteria contained in paragraph (2) of this subsection in the award of a contract.

(1) The apparent low bidder must submit written notification of an alleged bid error to the department [~~department's Construction Division~~] within five business days after the date bids are opened for the project. The notification must identify the items of work involved and must include bid documentation, such as quotes received, calculations made, or other related documentation used in bid preparation that substantiates the alleged error. Once the notification is submitted to the department, it may not be revised or supplemented unless additional information is requested by the department.

(2) The department [~~commission~~] will consider the following criteria in determining whether a bid error exists:

(A) the alleged bid error relates to a material item of work contained in the bid;

(B) the alleged bid error is a significant portion of the total bid as compared to the intended bid contained in the documentation submitted by the contractor in accordance with paragraph (1) of this subsection, and other contractor bids;

(C) the alleged bid error occurred despite the contractor's exercise of ordinary care in preparing its bid; and

(D) delay in the completion of the project will not have a significant impact on the cost to and safety of the public.

(3) The department [~~commission~~] may consider an alleged bid error caused by an effort to unbalance the bid as failure to exercise ordinary care.

(4) When the engineer's estimate on a project is less than $300,000, the executive director may determine whether a bid error exists, under the same conditions and criteria as provided in paragraphs (1) and (2) of this subsection.

§9.17. Award of Contract.

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this subchapter (relating to Acceptance, Rejection, and Reading of Bids and Tabulation of Bids, respectively). It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the lowest bid is determined to be both mathematically and materially unbalanced;

(3) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid;

(4) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces; or

(5) the lowest bid is determined to contain a bid error that meets the notification requirements contained in §9.16(e)(1) of this subchapter and satisfies the criteria contained in §9.16(e)(2) of this subchapter.

(b) Except as provided in subsection (c), (d), (e), or (f) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which:

(A) the nonresident's principal place of business is located; or

(B) the nonresident is a resident manufacturer; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

(d) For a maintenance contract for a building or a segment of the state highway system involving a bid amount of less than $300,000, if the lowest bidder withdraws its bid after bid opening, the executive director may recommend to the commission that the contract be awarded to the second lowest bidder.

(1) For purposes of this subsection, the term "withdrawal" includes written withdrawal of a bid after bid opening, failure to provide the required insurance or bonds, or failure to execute the contract.

(2) The executive director may recommend award of the contract to the second lowest bidder if he or she, in writing, determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder; and

(A) the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices;

(B) there is a specific need to expedite completion of the project to protect the health or safety of the traveling public; or

(C) delaying award of the contract would jeopardize the structural integrity of the highway system.

(3) The commission may accept the withdrawal of the lowest bid after bid opening if it concurs with the executive director's determinations.

(4) If the commission awards a contract to the second lowest bidder and the department successfully enters into a contract with the second lowest bidder, the department will return the lowest bidder's bid guaranty upon execution of that contract. [~~The lowest bidder may be considered in default.~~]

(e) If the lowest bidder is not a preferred bidder and the contract will not use federal funds, the department, in accordance with Transportation Code, Chapter 223, Subchapter B, will award the contract to the lowest-bidding preferred bidder if that bidder's bid does not exceed the amount equal to 105 percent of the lowest bid. For purposes of this subsection, "preferred bidder" means a bidder whose principal place of business is in this state or a state that borders this state and that does not give a preference similar to Transportation Code, §223.050.

(f) When additional information is required to make a final decision, the commission may defer the award or rejection of the contract until the next regularly scheduled commission meeting.

(g) Contracts with an engineer's estimate of less than $300,000 may be awarded or rejected by the executive director under the same conditions and limitations as provided in subsections (a)-(c) of this section.

(h) The commission may rescind the award of any contract prior to contract execution upon a determination that it is in the best interest of the state. In such an instance, the bid guaranty will be returned to the bidder. No compensation will be paid to the bidder as a result of this cancellation.

(i) For a contract with a DBE goal, all bidders must submit the DBE information required by §9.227 of this chapter (related to Information from Bidders) within five calendar days after the date that the bids are opened.

(j) Prior to contract award, all low bidders must be participating or provide documentation of participation in the Department of Homeland Security's (DHS) E-Verify system within five calendar days after the date that the bids are opened.

§9.18. Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements.

(a) Contract execution.

(1) Except as provided in paragraphs (2) and (3) of this subsection, within 15 days after the bidder receives written notification of the award of a contract, the bidder must execute and furnish to the department the contract with:

(A) a performance bond and a payment bond, if required and as required by Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price except as provided by subsection (c) of this section, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law. Department interpretations made in accordance with §9.16(b)(2) of this subchapter (relating to Tabulation of Bids) will be used to determine the contract amount for providing a performance bond and payment bond, if required, and as required by the Government Code, Chapter 2253;

(B) a certificate of insurance showing coverages in accordance with contract requirements;

(C) when required, written evidence of current good standing from the Comptroller of Public Accounts; and

(D) a list of all quoting subcontractors and suppliers.

(2) A bidder awarded a routine maintenance contract or a materials contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the department's order to begin work.

(3) The bidder selected for the award of a [~~construction~~] contract containing a DBE or SBE goal, who is not a DBE or SBE, must submit all the information required by the department in accordance with §9.227 of this chapter (relating to Information from Bidders) within the period described by §9.17(i) of this subchapter for a contract containing a DBE goal, or §9.319 of this chapter (relating to Contractor's Commitment Agreement) and §9.320 of this subchapter (relating to Contractor's Good Faith Efforts) within the period specified in the contract for a contract containing a SBE goal. The bidder must comply with paragraph (1) of this subsection within 15 days after written notification of acceptance by the department of the bidder's documentation to achieve the DBE or SBE goal.

(b) Bid guaranty. The department will retain the bid guaranty of the bidder awarded a contract until after the contract has been executed and bonded. If the bidder selected for the award of a contract with a DBE goal fails to submit the DBE information required by §9.227 of this chapter (related to Information from Bidders) within the period described by §9.17(i) of this subchapter or if the bidder awarded a contract does not comply with subsection (a) of this section, the bid guaranty will become the property of the state, not as a penalty but as liquidated damages. A bidder who forfeits a bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the bid guaranty.

(c) Performance or payment bonds for maintenance contracts. For maintenance contracts the department may require that a performance or payment bond:

(1) be in an amount equal to the greatest annual amount to be paid under the contract and remain in effect for one year from the date work is resumed after any default by the contractor; or

(2) be in an amount equal to the amount to be paid the contractor during the term of the bond and be for a term of two years, renewable annually in two-year increments.

(d) Performance or payment bonds for materials contracts. A performance or payment bond is not required for a materials contract.

§9.19. Emergency Contract Procedures.

(a) Purpose. In accordance with Transportation Code, Chapter 223, Subchapter C, in a highway emergency, the department in accordance with rules adopted by the commission is authorized to award [~~under~~] certain [~~conditions to award highway improvement~~] contracts [~~in cases of emergency~~]. This section provides for an alternate procedure for the expedited award of those [~~highway improvement~~] contracts to meet emergency conditions in which essential corrective or preventive action would be unreasonably hampered or delayed by compliance with other laws, this subchapter, or other sections of Part I of this title.

(b) Certification of emergency.

(1) A district engineer who identifies an emergency situation in the geographic area under his or her jurisdiction and determines that expedited action is required shall immediately notify the executive director or the director's designee not below the level of deputy executive director to describe the fact and nature of the emergency. Upon receiving authorization to proceed, the district engineer may initiate procedures for the award of an emergency contract. All such notification will be documented in writing.

(2) Examples of types of work which may qualify for emergency contracts include but are not limited to emergency repair or reconstruction of streets, roads, highways, and bridges; clearing debris or deposits from the roadway or in drainage courses within the right of way; removal of hazardous materials; restoration of stream channels outside the right of way in certain conditions; temporary traffic operations; and mowing to eliminate safety hazards; provided, however, that in each instance, the proposed work must satisfy the requisites of emergency as defined in this subchapter.

(3) Before the contract is awarded, the executive director or the director's designee not below the level of deputy executive director must certify in writing the fact and nature of the emergency giving rise to the award.

(c) Contractor eligibility. To be eligible to bid on an emergency contract, a contractor must be included in the department's list of prequalified bidders pursuant to §9.12 of this subchapter (relating to Qualification of Bidders) or must complete a bidder's questionnaire in a form prescribed by the department.

(d) Notification of prospective bidders.

(1) After an emergency is certified, the district engineer will review the department's file of eligible bidders and, if there are a sufficient number of firms, notify at least three of those firms.

(2) Consistent with and contingent upon the nature of the emergency, the district engineer may contact prospective bidders by telephone, letter, facsimile, or other appropriate form of communication.

(3) The district engineer will inform each prospective bidder of the nature of the emergency and furnish specifications for the remedy, including time constraints, bonding and insurance requirements, and any additional information needed for the prospective bidder to prepare a work plan and calculate the cost.

(4) If no eligible contractor is able to provide the required type of service, the district engineer may take any measure necessary to identify and locate an available contractor who is able to provide the required service. If selected, the prospective contractor thus identified must complete the bidder's questionnaire prior to final approval of the award.

(e) Bidding requirements.

(1) A prospective bidder's bid must be in writing and must include:

(A) a price for performing the work; and

(B) a response to each item in the district engineer's specifications if the price is based on other than unit price.

(2) If the district engineer so authorizes, the prospective bidder may submit an oral bid which must be confirmed in writing within 24 hours.

(f) Letting procedures.

(1) The district engineer will review the bids and, if awarded, shall award the contract to the best bidder and document the basis for the award. As used in this subsection, the best bidder is that firm best able to respond to the emergency in a timely manner and fulfill the state's priority needs as determined by the district engineer.

(2) Each bidder will be notified as soon as possible after the award is made, with written confirmation to follow.

(g) Contract.

(1) The department shall prescribe the form of the emergency contract and may include therein such matters and specifications as it deems advantageous to the state, including but not limited to provisions which address the specifications for completion of work, cost to perform the work, the basis for payment, time period needed to complete the work, control of work, insurance and bonding requirements, and any general or special conditions mutually agreed upon by the department and the contractor.

(2) Each such contract shall be made in the name of the State of Texas, signed by the executive director or the director's designee not below the level of district engineer on behalf of the department, and signed by the contracting party.

(3) The contractor must furnish satisfactory proof of insurance and bonds before any work is performed.

(4) The contract must be fully executed before any work is begun.

(5) The certification required in subsection (b) of this section must be attached to the contract.

(h) Exceptions. If the district engineer determines that the magnitude and extremity of the emergency require instantaneous action by the contractor in order to alleviate an immediate detrimental impact on public health and safety, and the executive director or the director's designee not below the level of deputy executive director has so noted in the certification of the emergency, the following exceptions are permitted.

(1) The district engineer may authorize the contractor to begin work:

(A) without a signed contract, provided the contract is signed within 24 hours after work begins; and

(B) without bonds and proof of insurance, provided they are furnished not more than three days after work begins.

(2) The executive director or deputy executive director may authorize the waiving of bonds or insurance requirements if it is determined that such requirements cannot be met prior to completion of the work or would prevent the timely performance of work to the detriment of public health, safety, or welfare.

(i) Reports to the commission. Not later than 24 hours after the contract is awarded, the district engineer shall notify the executive director or the director's designee not below the level of deputy executive director of the award of the emergency contract. Not later than the fifth working day following the date on which the contract is awarded, the executive director shall furnish each member of the commission written notification of the details of the emergency conditions and the award.

(j) Section 9.23 of this subchapter (relating to Evaluation and Monitoring of Contract Performance) does not apply to a contract awarded under this section.

§9.20. Partial Payments.

(a) Authority. A contract under this subchapter [~~Highway improvement contracts~~] may provide for partial payments.

[~~(1) Construction and preventive maintenance contracts. Construction contracts and preventive maintenance contracts may provide for partial payments.~~]

(b) [~~(2)~~] Trust agreement. At the request of a contractor and with the approval of the department and the comptroller of public accounts, any amount retained may be deposited under the terms of a trust agreement with a state or national bank that has its main office

or a branch office in Texas as selected by the contractor, provided that the contract price exceeds $300,000. The trust agreement shall provide that:

(1) [~~(A)~~] interest earned on deposited funds will be paid to the contractor unless otherwise specified under the terms of the agreement;

(2) [~~(B)~~] all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest shall be paid solely by the contractor;

(3) [~~(C)~~] the department may, at any time and with or without reason, demand in writing that the bank return or repay, within 30 days of the demand, the retainage or any investments in which it is invested; and

(4) [~~(D)~~] any other terms and conditions prescribed by the department and the comptroller of public accounts as necessary to protect the interests of the state.

§9.23. Evaluation and Monitoring of Contract Performance.

(a) The department will develop standards used to evaluate a contractor's performance under a highway improvement contract, including standards for conformance with the project plans and specifications and recordkeeping requirements; compliance with the contract and industry standards for safety; responsiveness in dealing with the department and the public; meeting progress benchmarks and project milestones; addressing project schedule issues, given adjustments, change orders, and unforeseen conditions or circumstances; and completing project on time. The department will develop an evaluation form to be used by department employees in evaluating contract performance.

(b) The district engineer of the district in which a project under a highway improvement [~~construction or maintenance~~] contract, other than a building contract, is located, or the Director of the Support Services Division for building contracts shall evaluate the contractor's performance under the contract. An interim evaluation shall be performed as necessary and on each anniversary date of the contract if the project extends for longer than one year. The district engineer for a highway improvement contract, other than a building contract, [~~construction or maintenance contracts~~] or the Chief Administrative Officer for a building contract [~~contracts~~] shall approve any final evaluations on the completion of the project. Only final evaluations will be used to determine whether the contractor's contract performance meets the department's requirements.

(c) If the contractor's performance on a project is below the department's acceptable standards for contract performance, the district engineer or the Director of the Support Services Division, as applicable, may work with the contractor to establish a recovery plan for the project. The established project recovery plan will be used to correct significant deficiencies in contractor performance. The district engineer or the Director of the Support Services Division, as applicable, will monitor and document the contractor's compliance with the established project recovery plan.

(d) District engineers for a highway improvement contract, other than a building contract, [~~construction or maintenance contracts~~] or the Chief Administrative Officer for a building contract [~~contracts~~] will submit each evaluation performed under this section and each established project recovery plan and resulting documentation to the division of the department that is responsible for monitoring the contract.

(e) The division that receives evaluations of a contractor under subsection (d) of this section periodically will review the final evaluations of that contractor that were completed during the review period, or if fewer than 10 final evaluations were completed during the review period, up to 10 of the most recent final evaluations completed within the previous three-year period. If the average of the final evaluations reviewed in this period is below the department's acceptable standards for contract performance, the division will send a notice to the contractor and request that the contractor submit to the division for approval a proposed corrective action plan that will be used to correct significant deficiencies in the performance in all of contractor's projects. The division, in consultation with the department's Chief Engineer for a highway improvement contract, other than a building contract [~~construction or maintenance contracts~~], or Chief Administrative Officer for a building contract [~~contracts~~], may modify the proposed corrective action plan and adopt a final plan. The division promptly will send the adopted corrective action plan to the contractor.

(f) For the 120-day period beginning on the day that the adopted corrective action plan is sent under subsection (e) of this section, the division will monitor the contractor's active projects to determine whether the contractor is meeting the requirements of the adopted corrective action plan or if there are no active projects, the division will monitor the contractor's next available projects. Before making a determination under this subsection, the division must consider and document any events outside a contractor's control that contributed to the contractor's failure to meet the performance standards or failure to comply with the corrective action plan. If at the end of the 120-day period contract performance remains below the department's standards for contract performance, the division will notify the contractor and forward to the Performance Review Committee all of the information that it has, which includes at minimum all final evaluations, any adopted corrective action plans, and any information about events outside a contractor's control contributing to the contractor's performance.

§9.24. Performance Review Committee and Actions.

(a) If information is required to be forwarded to a Performance Review Committee under §9.23 of this subchapter (relating to Evaluation and Monitoring of Contract Performance) or if a contractor, including a contractor on a materials contract, has defaulted, the [~~The~~] deputy executive director will appoint the members and chairman of the Performance Review Committee. The members and chairman serve at the discretion of the deputy executive director. The Performance Review Committee will review the information submitted to the committee under §9.23(f) of this subchapter, any documentation developed by the department during the evaluation process under §9.23 of this subchapter, and any documentation submitted by the contractor. For a materials contract, the Performance Review Committee will review any documentation developed by the department related to the contract and any documentation submitted by the contractor. The committee will determine whether grounds exist for action under this section. After reviewing the submitted information, the Performance Review Committee may recommend one or more of the following:

(1) take no action;

(2) reduce the contractor's bidding capacity;

(3) prohibit the contractor from bidding on one or more projects;

(4) immediately suspend the contractor from bidding for a specified period of time; or

(5) prohibit the contractor from being awarded a contract on which they are the apparent low bidder.

(b) The Performance Review Committee may recommend that one or more actions listed in subsection (a) of this section be taken immediately to ensure project quality, safety, or timeliness if:

(1) the contractor failed to execute a highway improvement contract or a materials contract after a bid is awarded, unless the contractor honored the bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Bid);

(2) the commission, during the preceding 36-month period, rejected two or more bids by the contractor because of contractor error;

(3) the department declared the contractor in default on a highway improvement contract or a materials contract; or

(4) a district notifies the committee through the referring division that a contractor has failed to comply with a project recovery plan established under §9.23(c).

(c) If the committee determines that action under subsection (a) or (b) of this section is appropriate, the committee, except as provided by subsection (e) of this section, will confer with the Chief Engineer, or the Chief Administrative Officer for a building contract, on the appropriate action to be taken and applied to the contractor. The committee will send its recommendation to the Deputy Executive Director within 10 business days after the date that it determines the action to be applied.

(d) The Deputy Executive Director will consider the Performance Review Committee's recommendation and make a determination of any action to be taken. Within 10 business days after the date of the Deputy Executive Director's determination, the department will send notice to the contractor and to appropriate department employees affected by the determination. The notice will:

(1) state the nature and extent of the remedial action;

(2) summarize the facts and circumstances underlying the action;

(3) explain how the remedial action was determined;

(4) if applicable, inform the entity of the imposition of a suspension; and

(5) state that the provider may appeal the reduction in accordance with §9.25 of this subchapter (relating to Appeal of Remedial Action).

(e) A decision of the Deputy Executive Director under subsection (d) of this section may be appealed in accordance with §9.25 of this title (relating to Appeal of Remedial Action).

(f) If the Performance Review Committee, in the performance of its duties under this section finds information that indicates that grounds for the imposition of sanctions under Chapter 10 of this title (relating to Ethical Conduct by Entities Doing Business with the Department) may exist, the committee immediately shall provide that information to the department's Compliance Division.

§9.26. Inclusion of Contract Remedies in Contracts.

(a) In addition to other contract provisions, each highway improvement contract must provide notice to the contractor of the evaluation of contract performance under §9.23 of this subchapter (relating to Evaluation and monitoring of contract performance) and the range of contract remedies applicable for substandard performance under the contract, including:

(1) the possible establishment of a project recovery plan or corrective action plan under §9.23 of this subchapter to correct significant deficiencies in contract performance;

(2) liquidated damages applicable to the contract under §9.22 of this subchapter (relating to Liquidated Damages);

(3) reduction in the contractor's bidding capacity under §9.24 of this subchapter;

(4) the prohibition or suspension of bidding on new projects under §9.24 of this subchapter; and

(5) prohibition from participating in an awarded contract under §9.24 of this subchapter.

(b) In addition to other contract provisions, each materials contract must provide notice to the contractor of the range of contract remedies applicable for substandard performance under the contract, including applicable actions that may be taken under §9.24 of this subchapter.

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

Filed with the Office of the Secretary of State on December 14, 2022.

TRD-202205026
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 463-8630

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CHAPTER 23. TRAVEL INFORMATION
SUBCHAPTER E. SUBSCRIBER AND PURCHASER INFORMATION

43 TAC §§23.81 - 23.85

The Texas Department of Transportation (department) proposes the repeal of §§23.81 - 23.85 concerning Subscriber and Purchaser Information.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEALS

Senate Bill No. 15, 87th Legislature, Regular Session, banned the disclosure of information regarding Texas Highways subscribers and other promotional product purchasers. With this prohibition, §§23.81 - 23.85 concerning the use of subscriber and purchaser Information are no longer necessary. Repeal of these sections would remove all regulations concerning permissible disclosure of subscriber and purchaser information.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of the change in statute and repeal of the rules, for each of the first five years there will be no fiscal implications for state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Joan Henderson, Travel Information Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Henderson has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of repealing the rules will be the department's compliance with state and federal law and increased privacy of subscriber and purchaser information.

COSTS ON REGULATED PERSONS

Ms. Henderson has also determined, as required by Government Code, §2001.024(a)(5), that the repeal of these rules is necessary to implement legislation and therefore, Government Code, §2001.0045 does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government

Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Henderson has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. She expects that during the first five years after the rule is repealed:

(1) it would eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. Henderson has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the repeal of §§23.81 - 23.85 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Subscriber Information Rules." The deadline for receipt of comments is 5:00 p.m. on January 28, 2023. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 204

§23.81. Purpose.

§23.82. Definitions.

§23.83. Department Use.

§23.84. Mailing List.

§23.85. Governmental Agency.

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

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS
SUBCHAPTER J. PORT OF PALACIOS PERMITS

43 TAC §§28.120 - 28.127

The Texas Department of Transportation (department) proposes new §§28.120 - 28.127, concerning Port of Palacios Authority Permits.

EXPLANATION OF PROPOSED NEW SECTIONS

Under Transportation Code, Chapter 623, Subchapter K, the Texas Transportation Commission (commission) has the authority to authorize Port of Palacios Authority (Authority) to issue permits for oversize and overweight vehicles on certain roads within the Authority. The Authority contacted the department and expressed the desire to obtain the authority needed to issue permits as allowed under current state law. The proposed new sections are necessary to authorize the Authority to issue permits and to implement and carry out the provisions of Transportation Code, Chapter 623, Subchapter K. These rules add to Chapter 28 of the department's rules new Subchapter J which was developed to be consistent with similar optional permitting programs previously established by the commission.

New §28.120, Purpose, sets out the purpose of Subchapter J, which is to allow the Authority to issue permits for the movement of oversize or overweight vehicles weighing up to 125,000 pounds on roads designated by Transportation Code, §623.219(b-1).

New §28.121, Definition, defines the Port of Palacios as the "Authority."

New §28.122, Authority's Powers and Duties, provides the powers and duties of the Authority and the department for the implementation and oversight of the Authority's permit program. Subsection (a) authorizes the issuance of permits and collection of fees and provides the maximum dimensions and gross weight that may be allowed under a permit. Subsection (b) authorizes the department to require a surety bond to pay for the costs of the maintenance of the roadways that are used by the permitted vehicles if the amount of the fees deposited in the state highway fund is not sufficient to cover those costs. The Authority can prevent recovery on the bond by paying the amount not covered by the fees. This section also covers the verification of permits, the provision of training necessary for the Authority to issue permits, accounting and auditing requirements, and audits. Subsection (g) provides the department's authority to ensure that the Authority complies with applicable law, including the rules in new Subchapter J. Subsection (h) sets out the fee requirements. Subsection (i) requires the Authority to enter into a contract with the department for the maintenance of roads on which the permitted vehicles will travel. Finally, subsection (j) sets out the Authority's reporting requirements. The provisions of the section were developed to be in compliance with Transportation Code, Chapter 623, Subchapter K, and to be consistent with similar optional permitting programs previously established.

New §28.123, Permit Eligibility, establishes the eligibility requirements that must be satisfied for the issuance of a permit by the Authority. The section prohibits the Authority from issuing a permit to a person or for a vehicle if administrative penalties imposed under Transportation Code, §623.271 have not been paid. This prohibition is required under Transportation Code, §623.271.

New §28.124, Permit Issuance Requirements and Procedures, sets out the requirements related to the form and content of the application for a permit. The requirements are necessary to comply with Transportation Code, §623.215 and are as consistent as possible with similar optional permitting programs previously established by the department.

New §28.125, Permit Weight Limits for Axles, provides the permit weight limits for axles that the Authority must follow as part of the permit program. Requirements and specifications include minimum axle group spacing and maximum permit weight for single and multiple axles.

New §28.126, Movement Requirements and Restrictions, sets forth movement requirements and restrictions that the Authority and a permittee must follow as part of the permit program. A permittee is required to carry the issued permit when moving the permitted vehicle and is prohibited under this section from moving an oversize or overweight load if a permit becomes void. A permit is void on issuance if the applicant for the permit gives false or incorrect information and becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit. The section provides limitations on the movement of a permitted vehicle because of weather conditions, road work, or time of day. Finally, the section sets out the requirements for types of scales that may be used to weigh permitted vehicles and provides speed restrictions.

New §28.127, Records, provides the records maintenance requirements that the Authority must follow as part of the permit process to ensure the department has adequate access to oversee the program.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined that for each of the first five years in which the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. James Stevenson, P.E., Director, Maintenance Division has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Stevenson has also determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be convenience and improved public safety.

COSTS ON REGULATED PERSONS

Mr. Stevenson has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules. Companies operating oversize or overweight vehicles will be required to purchase a permit to cover the cost of additional required maintenance due to extra roadway consumption. The actual amount is set by the Authority, but cannot exceed $120. Because the proposed rule is necessary to implement Transportation Code, Chapter 623, Subchapter K for the Authority and that subchapter does not specifically state that Government Code, §2001.0045 applies to the rule. Government Code, §2001.0045 does not requires the amendment or repeal of another rule to offset those costs, describe the action taken to offset those anticipated economic costs.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Stevenson has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments on the new §§28.120 - 28.127 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Port of Palacios Rules." The deadline for receipt of comments is 5:00 p.m. on January 28, 2023. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed new sections, or is an employee of the department.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.212, which allows the commission to authorize the authority to issue permits for the movement of oversize or overweight vehicles, and Transportation Code, §623.002, which provides the commission with the authority to establish rules necessary to implement Transportation Code, Chapter 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter K.

§28.120. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter K, the commission may authorize the Port of Palacios to issue permits for the movement of oversize or overweight vehicles carrying cargo on roads designated by Transportation Code, §623.219(b-1). This subchapter sets forth the requirements and procedures applicable to the issuance of permits by the Port of Palacios for the movement of oversize and overweight vehicles.

§28.121. Definition.

In this subchapter, "Authority" means the Port of Palacios.

§28.122. Authority's Powers and Duties.

(a) Authority authorized to issue permits. The Authority may issue a permit and collect a fee for the movement, on roads designated by Transportation Code, §623.219(b-1), of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight.

(b) Surety bond. The department may require the Authority to post a surety bond in the amount of $500,000 for the reimbursement of the department for actual maintenance costs of roads designated by Transportation Code, §623.219(b-1) if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the Authority fails to reimburse the department for those costs. The estimated maintenance costs will be based on the amortized cost of the identified roads, projected regular maintenance and operations costs, and the bridge consumption costs associated with the movement of overweight and oversize vehicles issued a permit by the Authority.

(c) Verification of permits. The Authority shall provide law enforcement and department personnel access to any of the Authority's property to verify compliance with this subchapter by the Authority or another person.

(d) Training. The Authority shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the Authority.

(e) Accounting. The Authority must comply with the department's accounting procedures for revenue collections and payments made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or, at the direction of the executive director, conduct audits of all permit issuance activities of the Authority. To ensure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the Authority is not complying with this subchapter or other applicable law, the executive director will issue a notice to the Authority allowing 30 days for the Authority to correct any non-compliance issue. If the department determines that, after that 30-day period, the Authority has not corrected the issue, the executive director may revoke the Authority's authority to issue permits under this subchapter. The Authority may appeal to the commission in writing the revocation of its authority under this subsection. If the Authority appeals the revocation, the Authority's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.214. The Authority may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency. On revocation of the Authority's authority to issue permits, termination of the maintenance agreement entered into under subsection (i) of this section, or expiration of this subchapter, the Authority shall pay to the department all permit fees collected by the Authority, less allowable administrative costs.

(i) Maintenance agreement. The Authority shall enter into an agreement with the department for the maintenance of roads designated by Transportation Code, §623.219(b-1), for which a permit may be issued under this subchapter. The agreement will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Reporting. The Authority shall provide monthly and annual reports to the department's Financial Management Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

§28.123. Permit Eligibility.

(a) Registration requirements. To be eligible for a permit under this subchapter:

(1) a vehicle or combination of vehicles must be registered under Transportation Code, Chapter 502; and

(2) the owner of the vehicle or combination of vehicles must be registered as a motor carrier under Transportation Code, Chapter 643 or 645.

(b) Prohibition for unpaid penalties. The Authority may not issue a permit under this subchapter:

(1) to a person or company that is prohibited under Transportation Code, §623.271 from being issued a permit; or

(2) for a vehicle that is prohibited under Transportation Code, §623.271 from being issued a permit.

§28.124. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter must be in a form approved by the department and at a minimum must include:

(1) the name of the applicant;

(2) the name of the driver of the vehicle in which the cargo is to be transported;

(3) a description of the kind of cargo to be transported;

(4) the kind and weight of each commodity to be transported;

(5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

(6) the route the carrier will travel on roads designated by Transportation Code, §623.219(b-1);

(7) the date or dates on which movement is requested.

(b) Permit form and contents. A permit issued under this subchapter must be in a form approved by the department and at a minimum must include all information required under Transportation Code, §623.215(a) and §623.216.

§28.125. Permit Weight Limits for Axles.

(a) Minimum axle group spacing. For an axle group to be permitted for maximum weight authorized under this section:

(1) an axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group; and

(2) two or more consecutive axle groups must have a minimum axle spacing of 12 feet, measured from center of the last axle of a group to center of the first axle of the immediately following group.

(b) Maximum permit weight. Maximum permit weight for an axle or axle group is the weight computed by multiplying 650 pounds times the total number of inches of the width of tires on the axle or group or the following applicable axle or axle group weight, whichever is less:

(1) single axle - 25,000 pounds;

(2) two-axle group - 46,000 pounds;

(3) three-axle group - 60,000 pounds;

(4) four-axle group - 70,000 pounds;

(5) five-axle group - 81,400 pounds; or

(6) trunnion axles - 60,000 pounds if:

(A) the trunnion configuration has two axles;

(B) there are a total of 16 tires for the trunnion configuration; and

(C) the trunnion axle, as shown in the following diagram, is 10 feet in width.

Figure: 43 TAC §28.125(b)(6)(C)

(c) Tire load rating. A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Permits for vehicles exceeding permit weight limits. For a vehicle exceeding weight limits provided in this section, a person must apply directly to the Texas Department of Motor Vehicles for an oversize or overweight permit in accordance with Transportation Code, Chapter 623.

§28.126. Movement Requirements and Restrictions.

(a) Carrying of permit. The original permit issued by the Authority must be carried in the permitted vehicle.

(b) Prohibition on movement with void permit. A permittee is prohibited from transporting an oversize or overweight load with a void permit. A permit is void if the applicant gives false or incorrect information. A permit becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit.

(c) Weather conditions or road work. Movement of a permitted vehicle is prohibited when:

(1) visibility is reduced to less than 2/10 of one mile;

(2) the road surface is hazardous due to weather conditions, such as rain, ice, sleet, or snow; or

(3) highway maintenance or construction work is being performed.

(d) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours. A permitted vehicle that is overweight but not oversize may be moved at any time.

(e) Weight ticket requirement. Any vehicle issued a permit by the Authority must be weighed on scales that are capable of determining gross vehicle weights and individual axle loads and are certified by the Texas Department of Agriculture or accepted by the United Mexican States.

(f) Speed. The maximum speed for a permitted vehicle is set by Transportation Code, §623.217.

§28.127. Records.

The Authority shall maintain records that evidence compliance with this subchapter. Those records are subject to audit by department personnel.

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 December 14, 2022.

TRD-202205029
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 29, 2023
For further information, please call: (512) 463-8630

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER J. GO TEXAN CERTIFIED RETIREMENT COMMUNITY PROGRAM

4 TAC §§17.600 - 17.604

The Texas Department of Agriculture withdraws the proposed repeal of §§17.600 - 17.604, which appeared in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8003).

Filed with the Office of the Secretary of State on December 13, 2022.

TRD-202205003
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: December 13, 2022
For further information, please call: (512) 936-9360

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 377. CHILDREN'S ADVOCACY PROGRAMS

SUBCHAPTER B. STANDARDS OF OPERATION FOR LOCAL COURT-APPOINTED VOLUNTEER ADVOCATE PROGRAMS

1 TAC §377.107

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §377.107, concerning Contract with Statewide Volunteer Advocate Organization. The amendment to §377.107 is adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5550). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to comply with Senate Bill (S.B.) 1156, 87th Legislature, Regular Session, 2021, which requires HHSC to remove the requirement for the statewide organization for the volunteer advocate for children program to be designated as a supporting organization under §509(a)(3) of the Internal Revenue Code.

COMMENTS

The 31-day comment period ended October 17, 2022.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Family Code §264.603(a), which no longer contains the requirement that the statewide organization for the volunteer advocate for children program be designated as a supporting organization under §509(a)(3) of the Internal Revenue 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 December 16, 2022.

TRD-202205063

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 5, 2023
Proposal publication date: September 16, 2022
For further information, please call: (512) 460-0992

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §§26.1 - 26.6, 26.11, 26.12

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to certain rules in 7 TAC Chapter 26, governing Texas perpetual care cemeteries. The amended rules are adopted without changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7505). The amended rules will not be republished.

In particular, the commission adopts amendments to §26.1, concerning fees to operate a perpetual care cemetery; §26.2, concerning required records to maintain; §26.3, concerning responding to written notice to prohibit interment of a homicide perpetrator in the same cemetery as a homicide victim; §26.4 concerning burial markers or monuments; §26.5, concerning conveyance of a cemetery plot; §26.6, concerning required record for cremains receptacle; §26.11, concerning information to consumers on how to file a consumer complaint; and §26.12, concerning response to written consumer complaints.

The adopted amendments arise from rule review conducted pursuant to Texas Government Code, §2001.039, and provide clarity, improve consistency and workability, eliminate an unneeded reference, and address certain clerical errors, and maintain consistent formatting within the chapter.

In August 2022, the department issued an advance notice of rule review, seeking informal feedback on the rule review. Notice of the review of 7 TAC Chapter 26 was published in the *Texas Register* on August 26, 2022 (47 TexReg 5145). No comments were received in response to that notice. On October 28, 2022, the commission determined that the reasons for initially adopting these rules continue to exist, and readopted 7 TAC Chapter 26, in its entirety, but also stated that certain revisions and other changes were appropriate and necessary, and that

such amendments would be proposed concurrently (47 TexReg 7505). These amendments as adopted are discussed below.

The rules in 7 TAC Chapter 26, govern perpetual care cemeteries. A reference is no longer needed and minor cleanup and reorganization is beneficial.

Section 26.1(a) sets out definitions for this section. Adopted amendments to §26.1(a) improve formatting consistency, add a definition for clarity, and consolidate all definitions into one subsection.

Section 26.1(b) discusses required fees for operating a perpetual care cemetery. Adopted amendment to §26.1(b) eliminates references to a renewal fee as it is no longer applicable.

Section 26.1(c) discusses the manner of fee payment. Adopted amendment to §26.1(c) makes a minor language change for clarity.

Section 26.1(d) explains how the annual assessment fee is adjusted. Adopted amendments to §26.1(d) remove the definition in order to consolidate all definitions in one subsection and make minor punctuation changes for clarity.

Section 26.1(e) explains when an additional examination may be necessary and what the associated costs may be. Adopted amendment to §26.1(e) makes a minor punctuation change for clarity.

Section 26.2(a) sets out definitions for this section. Adopted amendments to §26.2(a) add a definition for clarity and make a punctuation change for consistency.

Section 26.2(b) discusses record retention requirements. Adopted amendments to §26.2(b) make clerical changes for consistency.

Section 26.2(c) explains where records must be kept. Adopted amendments to §26.2(c) make clerical changes for consistency.

Section 26.3 provides suggested actions for cemetery owners relating to the interment of certain persons. Adopted amendments to §26.3 make clerical changes for clarity and consistency.

Section 26.4(h) explains requirements for cemeteries related to the purchase of outside burial markers or monuments. Adopted amendment to §26.4(h) makes a clerical change for clarity.

Section 26.5 explains the requirements for the issuance of conveyance documents for a cemetery plot. Adopted amendment to §26.5 makes a clerical change for consistency.

Section 26.6 explains the requirements for cremains receptacle maps. Adopted amendments to §26.6 make clerical changes for consistency.

Section 26.11(b) explains the requirements for providing notice of a consumer complaint. Adopted amendments to §26.11 make minor clerical changes for consistency.

Section 26.12(b) explains the requirements for responding to a consumer complaint. Adopted amendments to §26.12 make minor clerical changes for consistency.

The department received no comments regarding the proposed amendments.

The amended rules are adopted pursuant to Texas Finance Code (Finance Code), §712.008, which authorizes the commission to adopt rules to enforce and administer Health and Safety Code, Chapter 712.

Chapter 712 of the Health and Safety Code is affected by the adopted amended sections.

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 December 19, 2022.

TRD-202205102
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: January 8, 2023
Proposal publication date: November 11, 2022
For further information, please call: (512) 475-1301

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §90.103, §90.104

The Finance Commission of Texas (commission) adopts amendments to §90.103 (relating to Format) and §90.104 (relating to Non-Standard Contract Filing Procedures) in 7 TAC Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The commission adopts the amendments to §90.103 and §90.104 without changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7510). The rules will not be republished.

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 90 govern plain language contracts for regulated lenders. In general, the purpose of the rule changes to 7 TAC Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. In July 2022, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. The OCCC did not receive any informal comments on the advance notice. Notice of the review of 7 TAC Chapter 90 was published in the *Texas Register* on August 5, 2022 (47 TexReg 4691). The commission did not receive any official comments in response to the notice published in the *Texas Register.*

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Amendments to §90.103 update the list of typefaces that are considered easily readable for plain language contracts. Under Texas Finance Code, §341.502(a)(2), loan contracts must be "printed in an easily readable font and type size." Currently, §90.103(b) lists the following typefaces considered to be read-

able: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman. The adoption revises this list to add Georgia and Verdana, and to remove Caslon, Century Schoolbook, Garamond, and Scala. Since the commission originally adopted §90.103 in 2006, electronic contracts and screen reading have changed how consumers view contracts. The amendments to §90.103 are based on updated guidance for accessibility and screen reading, including guidance from federal agencies on typefaces that are considered accessible. *See, e.g.,* U.S. Department of Health and Human Services, Research-Based Web Design and Usability Guidelines, p. 106; Centers for Medicare & Medicaid Services, Section 508 Guide for Microsoft Word 2013, p. 5 (rev. 2018). Other amendments throughout §90.103 add a descriptive title to each subsection.

Amendments to §90.104 reorganize and clarify the requirements for submitting non-standard plain language contracts. Under Texas Finance Code, §341.502(b), if a regulated lender uses a loan contract other than a model contract adopted by the commission, then the lender must submit the contract to the OCCC for review. Currently, §90.104 describes the requirements for submitting these non-standard contracts to the OCCC. Under the adoption, subsection (a) is amended to provide an up-front summary of the submission requirements, including the requirements under Texas Finance Code, §341.502. In particular, new paragraph (a)(3) specifies that non-standard loan contracts "must be consistent with Texas law and federal law." Currently, lenders are required to ensure that contracts comply with applicable law, and the OCCC's prescribed certification requires a person submitting a non-standard contract to certify compliance with state and federal law. If a contract contains illegal provisions, then the contract is misleading, and is not "easily understood by the average consumer" as required by Texas Finance Code, §341.502(a)(1). Before submitting a loan contract for review, lenders and form providers should work with their legal counsel and compliance staff to ensure that contracts comply with applicable law. Amendments to subsection (b) specify the grounds for disapproving a non-standard contract under Texas Finance Code, §341.502(c). These amendments replace language on the certification of readability, which would be moved into subsection (d). Amendments to subsection (c) specify that the subsection refers to the requirements for filing copies of the loan contract. Amendments to subsection (d) consolidate the rule's requirements for the submission form that must be submitted with the copies of the loan contract. The commission believes that it is helpful to reorganize these related requirements into a single subsection.

The rule amendments are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for regulated loans. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 341.

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 December 16, 2022.

TRD-202205064
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: January 5, 2023
Proposal publication date: November 11, 2022
For further information, please call: (512) 936-7660

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER J. FUTURE OCCUPATIONS & RESKILLING WORKFORCE ADVANCEMENT TO REACH DEMAND (FORWARD) LOAN PROGRAM

19 TAC §§22.175 - 22.189

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 22, Subchapter J, Future Occupations & Reskilling Workforce Advancement to Reach Demand (FORWARD) Loan Program, §§22.175 - 22.189, with changes to the proposed text as published in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6546). The rules will be republished.

Changes from the proposed text include:

1. removing an unnecessary definition of "FFELP" in §22.176;

2. clarifying the applicable circumstances in §22.180(b);

3. clarifying who determines acceptable documentation in §22.186(c)(1); and

4. correcting an errant reference to "FFELP" in Section 22.187(b).

Section §22.186(b) has also been changed to establish the start of the repayment period in a manner that accounts for individuals enrolled in both credit-bearing and non-credit-bearing credentials, while minimizing added reporting burden on institutions. The start of the repayment period for borrowers in credit-bearing credential programs aligns with the agency's other student loan programs which utilize current enrollment reporting mechanisms for loan purposes. Non-credit-bearing credential programs are not included in the current enrollment reporting mechanisms for loan purposes. The start of the repayment period for these programs will be linked to the anticipated graduation date certified by the institution.

The program provides access to low interest loans to cover educational expenses, with the goal of accelerating the ability of employers throughout the State of Texas to fill high-demand jobs while providing students with high-value credentials. The subchapter creates a revolving fund in the state treasury funded by bond financed loan repayments for which the Board authorizes the agency to provide student loans. Repayment of funds under this program shall be deposited in the same account from which these loans originate. The Program aligns with the State's objec-

tives in its newly revised master plan for higher education, Building a Talent Strong Texas, by increasing the number of students who obtain high value credentials in high demand occupations without increasing student debt beyond the relative value of the credential.

The following comments were received regarding the adoption of the new rule.

Comments: A comment was received from the Texas Hospital Association recommending that nursing and medicine be included in the high-demand credentials that are eligible for the FORWARD Loan program. A comment was received from the Texas EMS Alliance recommending that emergency medical technician and paramedic education be included in the high-demand credentials that are eligible for the FORWARD Loan program.

Response: The high-demand credentials that are eligible for the FORWARD Loan program are assessed at least annually, in consultation with the Texas Workforce Commission, Texas Workforce Investment Council, and the Governor's Office of Economic Development and Tourism or their delegates. Eligible credentials are not codified in rule, so no change to the rule is necessary. It should be noted that nursing/patient care is included among the fields of eligible credentials for the initial launch of the FORWARD Loan program in January 2023, and that the agency will continue to assess current and projected workforce demands to determine future changes to the eligible credentials.

The new sections are adopted under Texas Education Code, Sections 52.17, 52.32-52.39, and 52.54. Section 52.17 authorizes the Coordinating Board to establish the necessary accounts with the state treasury for the administration of the program. Sections 52.32-52.39 authorize loans from the Texas Opportunity Plan Fund under certain conditions and set out additional requirements for loans from said Fund. Section 52.54 provides the Coordinating Board with the authority to adopt rules and regulations to effectuate the purpose of the state's student loan programs.

§22.175. Authority and Purpose.

(a) Unless otherwise noted in a section, the authority for these provisions is provided by Texas Education Code, §§52.17, 52.32-52.39, and 52.54.

(b) This subchapter establishes rules relating to the administration of the Future Occupations & Reskilling Workforce Advancement to Reach Demand (FORWARD) Loan Program. The program provides access to low interest loans to cover educational expenses, with the goal of accelerating the ability of employers throughout the State of Texas to fill high-demand jobs while providing students with high-value credentials.

§22.176. Definitions.

In addition to the words and terms defined in Texas Administrative Code, §22.1 of this title (relating to Definitions) the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cosigner--one who signs a student loan promissory note and thereby assumes liability for the debt and all fees and expenses associated with the note and who is not a direct beneficiary of the proceeds of the loan.

(2) Default--the failure of a borrower and cosigner, if any, to make loan installment payments when due for a total of 180 days.

(3) Forbearance--permission from Board staff, granted through documented loan program policies and procedures, that allows a borrower to cease payments temporarily, or allows an extension of time for making payments, or temporarily reduces the payment amount from the amount that was previously scheduled.

(4) Fund--the Texas Opportunity Plan Fund as created by the Constitution of the State of Texas, Article III, 50b.

(5) High-demand credential--undergraduate degrees, certificates, or short-term credentials identified by the Board in consultation with the Texas Workforce Commission, Texas Workforce Investment Council, and the Governor's Office of Economic Development and Tourism as filling critical workforce needs in the State while providing a high-value credential to students upon completion.

(6) Program--the Future Occupations & Reskilling Workforce Advancement to Reach Demand (FORWARD) Loan Program.

§22.177. Eligible High-Demand Credentials.

The Higher Education Coordinating Board shall determine which high-demand credentials shall be eligible for loans under the Program, in consultation with the Texas Workforce Commission, Texas Workforce Investment Council, and the Governor's Office of Economic Development and Tourism or their delegates.

(1) Eligible credentials shall be selected based on current and projected workforce demands and the ability of students to graduate from identified programs with manageable debt as defined by the Board's long-term strategic plan for Texas higher education.

(2) Selected credentials must meet measures for credentials of value to students and employers as defined by the Board's long-term strategic plan for Texas higher education.

(3) Eligible credentials shall be reassessed at least annually.

§22.178. Eligibility of Institutions.

(a) Eligible higher educational institution means an institution of higher education or a private or independent institution of higher education, as defined by Texas Education Code §61.003, that:

(1) is located in this state; and

(2) complies with the rules of the board promulgated in accordance with this subchapter and guidance issued under this authority.

(b) Each eligible institution shall designate a full-time administrative official of the institution who will act as the Board's on-campus agent. This officer shall certify all institutional transactions and activities with respect to the Program and shall be responsible for all records and reports reflecting the transactions with respect to the Program. The Program Officer may authorize other student financial aid officials at the institution to certify applications through this Program.

(c) Each eligible institution shall promptly report student borrower changes in enrollment status to Board Staff directly or to the National Student Clearinghouse.

§22.179. Eligibility of Students.

(a) Subject to the requirements in §22.183 of this subchapter (relating to Amount of Loan), Board Staff may authorize, or cause to be authorized, loans through the Program to students at any eligible institution which certifies that the student meets program qualifications, if the student:

(1) is a resident of Texas as defined in Texas Education Code Chapter 54 and Chapter 21, Subchapter B of this title;

(2) is enrolled in an eligible high-demand credential program so that the student will be able to complete the credential program in two years or less;

(3) is in good standing and is making satisfactory academic progress toward the eligible high-demand credential as determined by the institution;

(4) has insufficient resources to finance his or her education;

(5) has provided information on two references who live at separate addresses and are expected to know the student's current address at all times throughout the life of the loan;

(6) has signed a promissory note acknowledging his or her obligations and responsibilities to the fund; and

(7) has received a favorable evaluation of his/her credit report or has obtained the signature of a qualified cosigner who has received a favorable evaluation of his/her credit report.

(b) For students enrolled in degree programs, the student must have completed at least 50% of the required coursework prior to receiving a loan through the Program.

(c) For students enrolled in non-degree programs, the program's duration must be less than two years.

(d) Students enrolled in master's degree coursework are eligible for this Program if the master's degree is part of a combined baccalaureate-master's program approved by the institution of higher education.

§22.180. Discontinuation of Eligibility.

(a) A student's eligibility for the program ends two years from the start of the semester in which the student received the first loan through the Program unless the student is granted a hardship extension in accordance with §22.181 of this subchapter (relating to Hardship Provisions).

(b) In circumstances when a prior recipient of a loan through this Program is no longer eligible solely due to not meeting the requirement of being enrolled in an eligible high-demand credential program per §22.179(2) of this subchapter (relating to Eligibility of Students), the student may continue to receive loans through the Program if:

(1) The student continues to be enrolled in the credential program that was used to demonstrate initial eligibility for the Program; and

(2) The student continues to meet all other eligibility criteria outlined in §22.179 of this subchapter (relating to Eligibility of Students).

§22.181. Hardship Provisions.

(a) In the event of a hardship or for other good cause, the Program Officer at a participating institution may allow an otherwise eligible student to receive a loan through this Program:

(1) while not meeting the satisfactory academic progress requirements, as defined in §22.179(3) of this subchapter (relating to Eligibility of Students); or

(2) while enrolled beyond the time limit restrictions defined in §22.180(a) of this subchapter (relating to Discontinuation of Eligibility).

(b) Hardship conditions may include, but are not limited to:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance; or

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance.

(c) Documentation of the hardship circumstances approved for a student to receive a loan must be kept in the student's files, and the institution must identify students approved for a loan based on a hardship to the Coordinating Board upon request.

(d) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.182. Requirements of Cosigner.

(a) A cosigner shall:

(1) be at least 21 years of age or older;

(2) have a regular source of income;

(3) have received a favorable evaluation of his/her credit report; and

(4) reside in the United States or a U.S. territory and be a U.S. citizen or permanent resident of the United States.

(b) A spouse may not act as the cosigner for the student.

(c) Cosigners are guarantors of payment and not of collection; it is not necessary for the Board Staff to demonstrate that the borrower is insolvent before it may pursue collection against the cosigner.

§22.183. Amount of Loan.

(a) Aggregate Loan Limit. The maximum aggregate loan amount for any eligible student shall take into account the definition of manageable debt under the Board's Long-Range Master Plan for Higher Education.

(b) Annual Loan Limit. In no case shall the annual loan amount exceed the difference between the cost of attendance and the financial resources available to the applicant, including the applicant's scholarships, gifts, grants, and other financial aid. The student's maximum eligibility for Federal Direct Loans, except for Federal Plus loans, must be considered by the institution as other financial aid, whether or not the student actually receives such assistance.

§22.184. Loan Interest.

The interest rate charged for loans through this program shall be set annually by the Commissioner, shall be simple interest, and shall begin to accrue on the outstanding principal from the date of disbursement. These loans are not eligible for interest subsidy.

§22.185. Disbursements to Students.

(a) No disbursement shall be made to any student until he or she has executed a promissory note payable to the program for the full amount of any loan plus interest and other authorized fees. In addition, a cosigner's signature may be also required in accordance with the provisions of §22.179(7) of this subchapter (relating to Eligibility of Students).

(b) The original of such executed promissory note shall be forwarded to the Board immediately.

(c) For the purposes of any promissory note executed by a borrower, the defense that he or she was a minor at the time he or she executed a note shall not be available to him or her in any action arising on the note.

§22.186. Repayment of Loans.

(a) Period of loan repayment. The repayment period shall be 10 years.

(b) The repayment period shall begin no earlier than six months after:

(1) the date on which the student ceases to be enrolled at least half-time at an eligible institution, for borrowers enrolled in credential programs measured in semester credit hours; or

(2) the anticipated graduation date certified by the institution of higher education on the loan application, for borrowers enrolled in programs that are not measured in semester credit hours.

(c) Monthly repayment amount. The method for calculating the monthly repayment amount for loans through this Program shall be determined annually by the Commissioner, and shall be calculated annually based on:

(1) the borrower's income, as demonstrated through federal income tax returns or other documentation determined to be acceptable by Board staff;

(2) the borrower's monthly accrued interest on loans through the Program; and

(3) the borrower's cumulative outstanding student loan principal balance.

(d) Income threshold. Borrowers may be automatically placed in forbearance when the demonstrated income is below a threshold established by Board staff in consultation with the Texas Workforce Commission.

§22.187. Deceased or Disabled Borrowers and Cosigners.

(a) Upon final verification of the death or determination of permanent and total disability of a borrower, all loans through the Program shall be discharged unless there is a judgment against the borrower and the Commissioner determines that a release of the borrower's liability is not in the best interest of the Program.

(b) Verification of death and determination of permanent and total disability of a borrower or cosigner through the Program shall be made in accordance with the governing provisions of the Federal Direct Loan Program.

(c) The final verification of death and determination of permanent and total disability of a borrower or cosigner shall be made by Board Staff.

(d) Upon final verification of the death or determination of permanent and total disability of a borrower, the liability of the cosigner for that borrower shall be discharged.

(e) Upon final verification of the death or determination of permanent and total disability of a cosigner, Board Staff shall determine if the release of the liability of the cosigner is in the best interest of the loan program and, if so, shall authorize a release of the cosigner's liability, whether or not there is a judgment against the cosigner.

§22.188. Enforcement of Collection.

When any borrower or cosigner fails or refuses to make as many as five monthly payments due in accordance with an executed note through the Program, the full amount of remaining principal, accrued interest, and other charges shall become due and payable immediately. When as many as six payments have been missed, the loan will be considered in default, and the Office of the Attorney General may file suit for the outstanding balance.

§22.189. Delegation.

The board delegates to the Commissioner the powers, duties, and functions authorized by the Act, necessary to carry out this subchapter, except those relating to the sale of bonds and the letting of contracts for insurance.

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 December 12, 2022.

TRD-202204996
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: January 1, 2023
Proposal publication date: October 7, 2022
For further information, please call: (512) 427-6365

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER K. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR MATERNAL CARE

25 TAC §§133.201 - 133.211

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §133.201, concerning Purpose; §133.202, concerning Definitions; §133.203, concerning General Requirements; §133.204, concerning the Designation Process; §133.205, concerning Program Requirements; §133.206, concerning Maternal Designation Level I; §133.207, concerning Maternal Designation Level II; §133.208, concerning Maternal Designation Level III; §133.209, concerning Maternal Designation Level IV; §133.210, concerning the Survey Team; and new §133.211 concerning the Perinatal Care Regions.

The amendments to §§133.202 - 133.210 are adopted with changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3888) and the sections will be republished. Sections 133.201 and 133.211 are adopted without changes and will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption updates the content and processes with the advances and practices since the rules were adopted in 2018. Senate Bill (S.B.) 749, 86thLegislature, Regular Session, 2019, amended Texas Health and Safety Code, Chapter 241. S.B. 749 requires language specific to waiver agreements, a three-person appeal panel for designation reviews, and language specific to telemedicine and telehealth be integrated into the maternal rules.

House Bill (H.B.) 1164, 87th Legislature, Regular Session, 2021, amended Texas Health and Safety Code, Chapter 241. H.B. 1164 added statutes concerning patient safety practices for placenta accreta spectrum disorder (PASD) in hospitals with maternal levels of care designation. As part of the standards for designation, hospitals must implement patient safety practices for screening, evaluation, diagnosis, treatment, management, and reporting of PASD for all maternal patients and integrate these

measures into their maternal Quality Assessment and Performance Improvement (QAPI) Plan.

DSHS worked in collaboration with the Perinatal Advisory Council's (PAC) subcommittee assigned to address the PASD patient safety practices. The PAC used data collected by DSHS in its analysis and recommendations. The PAC considered recommendations and publications of the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, including the publication "Guidelines for Perinatal Care." The PAC reviewed guidelines by the Society of Maternal-Fetal Medicine, the geographic and varied needs of citizens of this state, and the patient safety practices adopted under Texas Health and Safety Code §241.1837. The PAC and DSHS solicited comments from physicians who practice in the evaluation, diagnosis, treatment, and management of placenta accreta spectrum disorder; other health professionals who practice in the evaluation, diagnosis, treatment, and management of placenta accreta spectrum disorder; health researchers with expertise in placenta accreta spectrum disorder; representatives of patient advocacy organizations; and other interested persons during the rule development.

A similar PAC subcommittee addressed the rule language specific to integrating the telehealth and telemedicine into the maternal rules.

The PAC formed a workgroup to collaborate with DSHS staff to review the comments received and determine the most appropriate language to ensure the health and safety of pregnant patients and prevent any unnecessary burden on the facilities providing maternal care.

COMMENTS

During the 31-day comment period, DSHS received comments from seventeen commenters, including the Texas Hospital Association (THA); Teaching Hospitals of Texas (THOT) representing sixteen hospitals; University of Texas Medical Branch at Galveston (UTMB); Baylor Scott & White Health (BSWH); Covenant Children's Hospital; Texas Health Resources; Texas EMS, Trauma and Acute Care Foundation (TETAF)/Texas Perinatal Services; Steward Family Hospitals; Texas Medical Association (TMA) representing four additional physician organizations; Sage Family Medicine Associates; Texas Association of Obstetricians and Gynecologists District XI; Children's Hospital of San Antonio; Women's Hospital at Renaissance; and four individuals. The Texas Association of Obstetrician and Gynecologists District XI submitted separate comments in addition to the TMA letter. A summary of comments relating to the rules and DSHS's responses follows.

Comment: Five commenters requested DSHS to evaluate and consider changing the use of "shall" versus "must" in the amended rule language.

Response: DSHS acknowledges the comments. DSHS followed rule writing guidelines and there is no change to the rules in response to this comment.

Comment: Three commenters requested DSHS consider a state-wide database for perinatal information and patient outcomes.

Response: DSHS acknowledges the comments and declines to revise the rule language. DSHS does not have the legislative authority to develop and maintain a state-wide registry or database for perinatal care.

Comment: Four commenters recommended allowing the Regional Advisory Council (RAC)-PCR Alliance to develop and define maternal QAPI review "triggers" with the rules to serve as guidelines for our maternal facilities.

Response: DSHS disagrees and declines to revise the rules. The triggers will be defined by DSHS in collaboration with the PAC and stakeholders.

Comment: Five commenters recommended adding language that defines the required staff to address the additional screening for PASD, QAPI plan activities, and the compiling of data requirements.

Response: DSHS disagrees and declines to revise the rule. There are no staffing standards or recommendations at the national level to define the staff required for these requirements.

Comment: Five commenters recommended DSHS provide written notification to facilities of their requirements not met during the survey process and provide an opportunity for correction.

Response: DSHS disagrees and declines to revise the rules. DSHS meets with the facility to discuss requirements not met and develops a corrective action plan with the facility.

Comment: One commenter recommended facilities be designated as "accreta centers," separate from Level IV Maternal Designation.

Response: DSHS disagrees and declines to revise the rules. Legislation does not authorize designation for accreta centers in Texas.

Comment: One commenter requested DSHS allow a designated Level IV maternal facility to transfer maternal patients for highly specialized services unavailable at their facility to a facility with appropriate services, but not a designated maternal center and for children's hospitals providing maternal services to have exceptions on transfer requirements.

Response: DSHS disagrees and declines to revise the rules at this time. This will be evaluated for future rule amendments.

Comment: §133.202(5): Four commenters recommended adding "medical" to the definition for "board-eligible."

Response: DSHS agrees and modifies the language to include "medical" in the definition.

Comment: §§133.202(6), 133.202(19), 133.203(d), 133.203(e), and 133.205(b)(3)(F): Two commenters recommended replacing the word "compliance" with "met" or "meeting."

Response: DSHS agrees and modifies the language.

Comment: §133.202(13): Two commenters recommended the definition for "immediately" include available, as in "immediately available. "

Response: DSHS disagrees and declines to revise the rule language in response to this comment, as "available" is defined in the rules.

Comment: §133.202(13): Four commenters recommended the definition for "immediately" be "able to respond without delay as in STAT."

Response: DSHS agrees and modifies the language.

Comment: §133.202(13): Four commenters recommended removing "or near, as in location" from the definition for "immediately."

Response: DSHS agrees and revises the language.

Comment: §§133.202(19), 133.205(b)(1), 133.205(b)(3)(C), 133.205(b)(3)(F), and 133.205(b)(3)(G): Forty commenters stated the definition of "Maternal Oversight Committee" is burdensome and excessively prescriptive and requested it be deleted or revised.

Response: DSHS accepts the recommendation, and the language is revised to "Maternal Program Oversight" for this subchapter. This change allows for program flexibility.

Comment: §133.202(21) and §133.202(22): Two commenters recommended a space between Medical and Director, and between Program and Manager.

Response: DSHS disagrees and declines to revise the rule language because the space is present in the published proposed rule language.

Comment: §133.202(25): One commenter recommended adding "or near" to the "on-site" definition to avoid unnecessarily excluding physicians located nearby the facility who are still able to meet the time frame for urgent requests.

Response: DSHS disagrees and declines to revise the rule language. Section 133.202(39) defines "urgent" as capable of arriving within 30 minutes. Section 133.202(13) is being revised to define "immediately" as able to respond without delay, commonly referred to as STAT.

Comment: §133.202(25): Two commenters recommended deleting "rapidly" to the definition for "on-site."

Response: DSHS agrees and modifies the language.

Comment: §133.202(25): One commenter requested additional clarification of the definition "on-site."

Response: DSHS acknowledges this comment but declines to revise the rule in response to this comment.

Comment: §133.202(32): Two commenters stated the language provides good definitions for QAPI.

Response: DSHS appreciates the comments, and no change is necessary.

Comments: §133.203(f)(2)(A): Two commenters stated the language had words spelled incorrectly.

Response: DSHS declines to revise the rule as the words were spelled correctly in the published proposed rule language.

Comments: §§133.203(f)(3)(G) and (f)(4)(I), 133.208(a)(7), and 133.209(a)(9): Fifteen commenters stated the proposed language limits the outreach education to only findings in the QAPI Plan and process.

Response: DSHS agrees and revises the language to provide additional opportunities for outreach education.

Comment: §133.203(f)(4)(F) and §133.209(a)(6): Three commenters requested clarification on privileges for the Level IV PASD multidisciplinary care team members to clarify screening and to add "including postpartum care."

Response: DSHS agrees and revises the language to remove privileges and add "risk factor" screening and "including postpartum care" to the requirement.

Comment: §133.203(g)(5): One commenter recommended revising the language to allow DSHS to determine if requirements were met in the event a facility may fail to provide access to records it may not be aware of and to avoid unintentional consequences.

Response: DSHS agrees and revises the language.

Comment: §133.203(g)(5): One commenter recommended removing the provision for access by DSHS and surveyors to maternal patient records.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The medical record is written evidence of the care provided to maternal patients.

Comment: §133.203(g)(5) and §133.204(v): Seven commenters identified concerns regarding access to peer review information by DSHS and survey organizations due to statutory confidentiality.

Response: DSHS agrees and removes the language from §133.203(g)(5) and §133.204(v).

Comment: §133.203(h): Two commenters thanked DSHS for a clear and reasonable conflict of interest criteria for surveyors.

Response: DSHS appreciates the comments, and no change is necessary.

Comment: §133.204(a)(1)(B): One commenter recommended instituting a site survey requirement for Level I maternal facilities.

Response: DSHS declines to revise the language, which would impose an additional burden on the small, rural hospitals providing perinatal services. Level I facilities currently perform a self-survey and attestation for designation.

Comment: §133.204(a)(1)(C): Two commenters recommended replacing the word "call" with "contact."

Response: DSHS agrees and revises the rule as recommended.

Comment: §133.204(a)(1)(C): Two commenters recommended allowing 10 business days for a facility to call DSHS to discuss a plan of correction if the facility has three or more DSHS-approved designation requirements that are defined as not met.

Response: DSHS agrees and revises the language to 10 business days.

Comment: §133.204(a)(1)(D)(vi): Three commenters recommended to add language specifically to extend the 90 days for a facility to demonstrate improvement in the Plan of Correction (POC).

Response: DSHS appreciates the comments and declines to revise the rule. The rule language was revised before the proposed rule was published in the July 8, 2022, issue of the *Texas Register.* The published language is "documented evidence that the POC was implemented within 90 days of the designation survey" replacing demonstrated improvement.

Comment: §133.204(c): Three commenters recommended deleting the language related to a change of ownership or change in physical location requirement.

Response: DSHS disagrees and declines to revise the rule. Re-designating ensures the commitment and the requirements for designation continue to be met.

Comment: §133.204(e): Two commenters recommended revising "being approved for" to "a final decision is rendered regarding."

Response: DSHS agrees and revises the language to state, "The facility has the right to withdraw its application for maternal designation any time before a designation approval."

Comments: §133.204(k)(1): Three commenters suggested allowing facilities to post the maternal designation status on their facility website and not posting it in a public area in the hospital.

Response: DSHS disagrees and declines to revise the rule. A certificate posted in the facility allows staff, patients, and visitors to view the document. Facility designation may be posted on the facility website, in addition to posting in the facility.

Comment: §133.204(o): Two commenters recommended adding language from S.B. 749 that DSHS provide written explanation regarding the specific reasons that prevented the hospital from receiving a higher level of care designation.

Response: DSHS disagrees to revise the language to include the specific reasons that prevented a hospital from receiving the higher level of designation. DSHS makes a change to clarify the language to "provide written notification" instead of "will notify the facility" of the designation requirements in §133.204(o) and (p).

Comment: §133.204(p): Two commenters recommended the word "guide" be removed and the language be revised for a Corrective Action Plan.

Response: DSHS agrees and revises the language.

Comment: §133.204(q) Two commenters recommended adding "designation" to the requirement for clarification.

Response: DSHS agrees and revises the language to include "designation."

Comment: §133.204(q): One commenter recommended allowing the new process for rule waiver and appeals be available for current designated facilities outside of the 30-day window and not be required to wait a 3-year period to file an appeal.

Response: DSHS acknowledges the comment and declines to revise the rule. An appeal process is currently in place. DSHS currently works with facilities to address requirements not met.

Comment: §133.204(q): Two commenters stated the appeal process seems to be well-structured, clear and fair.

Response: DSHS appreciates the comments, and no change is necessary.

Comments: §133.204(r)(2)(C): Four commenters shared concerns that the waiver language is not reflective of the S.B. 749 language making the rules more restrictive. It is recommended to use statute language in the rule.

Response: DSHS agrees and revises the rule language to reflect the S.B. 749 language.

Comment: §133.204(w) and §133.210(e): Two commenters recommended survey organizations be included in the language regarding complying with all relevant law related to the confidentiality of all facility information reviewed.

Response: DSHS agrees and revises the language.

Comment: §133.205(b)(1): Two commenters recommended the facility's governing body must review and approve the Maternal Program Plan.

Response: DSHS agrees and revises the rule.

Comment: §133.205(b)(2)(E) and §133.205(b)(2)(E)(ii): Sixteen commenters stated facilities may interpret the requirement as mandating telehealth and telemedicine services.

Response: DSHS agrees and modifies the language to include "if utilized."

Comment: §133.205(b)(2)(E)(i): Two commenters requested DSHS clarify that consultation is for inpatient care only.

Response: DSHS agrees and modifies the language to include "inpatient."

Comment: §133.205(b)(2)(E)(i): Two commenters requested DSHS clarify that the telehealth and telemedicine language does not include physician-to-physician discussions.

Response: DSHS disagrees and declines to amend the rule because the definitions in §133.202(36) and (37) are sufficient to address the concern. The telehealth and telemedicine definitions in Texas Occupations Code Chapter 111, reflect it is a healthcare service delivered by a physician or healthcare professional to a patient in a different physical location.

Comment: §133.205(b)(2)(G): Three commenters requested the evaluation of a facility's disaster preparedness and evacuation plan be extended to every three years instead of annually.

Response: DSHS disagrees and declines to revise the rule since many internal operations and individuals may change in three years.

Comment: §133.205(b)(2)(G): Two commenters stated the requirement is much clearer now in the rule language.

Response: DSHS appreciates the comments, and no change is necessary.

Comment: §133.205(b)(3)(A): Three commenters recommended removing the requirement for the Chief Executive Officer, Chief Medical Officer, and Chief Nursing Officer to implement a culture of safety and to ensure adequate resources to support the QAPI Plan, stating it is unnecessary.

Response: DSHS disagrees and declines to revise language. The commitment of facility administration is required for the success of a designation program and patient safety.

Comment: §133.205(b)(3)(A): Two commenters requested the addition of "are allocated" and "maternal" for clarification.

Response: DSHS agrees and modifies the language and also removes the words "are available."

Comment: §133.205(b)(3)(F): Two commenters recommended the word "compliance" be revised to "met" or "meeting."

Response: DSHS agrees and revises the language.

Comment: §133.205(b)(3)(F): Five commenters recommended removing "standards of care," which may be confusing for facilities. The commenters recommended additional language to clarify that telemedicine and telehealth services are not mandatory.

Response: DSHS agrees to revise the language.

Comment: §133.205(b)(3)(F): Three commenters recommended that the telemedicine and telehealth requirement need a distinction between medical and behavioral health encounters for tracking and summary reports.

Response: DSHS disagrees and declines to revise the rule. Both encounters for maternal patients managed in the hospital need to be tracked and reported.

Comment: §133.205(d): One commenter recommended adding language that allows the identified Maternal Medical Director to delegate responsibilities to a qualified individual or committee.

Response: DSHS disagrees and declines to revise the rule. The facility Maternal Medical Director responsibilities cannot be delegated.

Comment: §133.205(d)(7) and §133.205(e)(5): Two commenters requested to remove the Maternal Medical Director's requirement to co-chair the Maternal Oversight Committee.

Response: DSHS agrees and removes co-chairing in §133.205(d)(7). The language for the Maternal Oversight Committee definition is revised. The language is modified to Maternal Program Oversight in §133.205(d)(7) and §133.205(e)(5).

Comment: §133.205(d)(7) and §133.205(e)(5): Four commenters recommended removing the Maternal Medical Director's requirement to co-chair the Maternal Oversight Committee and change it to "providing leadership and input to."

Response: DSHS agrees and revises the language to frequently leading and participating for the Maternal Medical Director and Maternal Program Manager in addition to the revision regarding Maternal Oversight Committee.

Comment: §133.206(c)(3): Six commenters recommended clarifying that the Level I Obstetrics and Gynecology (OB/Gyn) physician be available at all times for consultation.

Response: DSHS agrees and revises the language.

Comment: §133.206(c)(6) and §133.207(c)(3): Three commenters recommended the inclusion of family medicine physicians in the Level I and Level II requirements.

Response: DSHS agrees and revises the language.

Comment: §§133.206(c)(11)(C), 133.207(c)(14)(C), 133.208(d)(20)(C), and 133.209(d)(19)(C): Five commenters recommended the obstetrical support services, such as anesthesia and blood bank personnel, be present at the patient's bedside at the outset of a trial of labor after cesarean and allow the managing physician to arrive rapidly to any request instead of "on-site" only.

Response: DSHS disagrees and declines to revise the rules. Blood bank and anesthesia personnel need to be on-site to respond to an emergent condition, but do not need to remain at the patient bedside during the procedure.

Comment: §§133.206(c)(14)(C), 133.207(c)(17)(C), 133.208(d)(23)(C), and 133.209(d)(22)(C): Twenty commenters recommended clarification for "risk factor assessment" to include "evaluation to identify individuals at risk for placenta accreta spectrum disorder."

Response: DSHS agrees and revises the language to "risk factor screening" for clarification.

Comment: §§133.206(c)(14)(C), 133.207(c)(17)(C), 133.208(d)(23)(C), and 133.209(d)(22)(C): Five commenters recommended including language from H.B. 1164 regarding the fostering of telemedicine medical services and including postpartum care.

Response: DSHS agrees and revises the rules.

Comment: §133.207(c)(1)(B): Two commenters stated concerns that including "must" in the rule will "bind them to transferring patients out of their facility" to a higher-level maternal designated facility.

Response: DSHS disagrees; however, DSHS revises the language to clarify it is the managing physician's decision to transfer patients.

Comment: §133.207(c)(3): Two commenters recommended adding language from S.B. 749 noting that facilities utilizing family medicine physicians must have a written plan for responding to obstetrical emergencies requiring services or procedures outside the scope of privileges granted to the family medicine physician and regularly monitoring outcomes in their QAPI.

Response: DSHS agrees and revises the language to add §133.207(c)(4) with the recommended language. The remaining paragraphs in this subsection are renumbered.

Comment: §§133.207(c)(5), 133.208(d)(5) and (15)(C), 133.209(d)(3) and (14)(C): Seven commenters supported the addition of board-eligible physicians in the rules.

Response: DSHS appreciates the comments, and no change is necessary.

Comment: §133.207(c)(12)(C)(i): Two commenters agreed with the removal of platelets for the required blood products.

Response: DSHS appreciates the comments, and no change is necessary.

Comments: §133.208(a)(7) and §133.209(a)(9): Ten commenters stated the proposed language limits the outreach education to only findings in the QAPI Plan and process. The intent was to ensure additional education, not to limit outreach education.

Response: DSHS agrees and revises the language to expand the opportunities for outreach education.

Comment: §133.208(d)(5): Two commenters recommended clarification regarding consultation with the addition of inpatient.

Response: DSHS agrees and revises the language to inpatient consultation.

Comment: §133.208(d)(5): One commenter requested clarification that telemedicine for Maternal Fetal Medicine (MFM) services does not substitute for in-person consultation on complex and critically ill patients. The commenter stated the language imposes a new and undefined standard for the hospitals.

Response: DSHS disagrees and declines to revise the rule. The language allows flexibility for telemedicine utilization while ensuring complex and critically ill maternal patients receive the services and care needed in-person for the best outcomes.

Comment: §133.208(d)(5): One commenter recommended changes to the Level III requirement for the MFM physician to be available at all times and arrive within 30 minutes of an urgent request to co-manage patients. The commenter stated the MFM physician is a consultant and not a proceduralist and does not need to be available at a specific facility and that this requirement would limit hospitals from obtaining a Level III designation.

Response: DSHS disagrees and declines to revise the rule. Section 133.208(d)(5)(A) allows the MFM physician to consult on maternal inpatient care by telemedicine as appropriate for the patient's condition. However, telemedicine cannot be utilized if

the managing physician requests an in-person consultation for a complex or critically ill maternal patient.

Comment: §133.208(d)(5)(A)(iii): Two commenters recommended adding "as needed" to the requirement language.

Response: DSHS agrees and revises the language.

Comment: §133.208(d)(9): Three commenters recommended Level III and Level IV facilities have the option to utilize telemedicine and telehealth to meet the in-person visit requirements for behavioral health services and in-person psychiatrist visits at a Level IV.

Response: DSHS agrees and modifies the language for the Level III facilities to include telemedicine.

Comment: §133.209(d)(1)(B): Two commenters shared concerns regarding language not included to allow the transfer of maternal patients to a non-designated system hospital in close proximity for medical or surgical specialty care not provided in the Level IV maternal designated facility. The hospitals stated they would have to duplicate all advanced services in both hospital system locations, which would be extremely costly, overly burdensome, and inefficient.

Response: DSHS disagrees and declines to revise the rule. The Level IV designated facility must have an adult Intensive Care Unit and critical care capabilities for highly complex and critically ill or unstable maternal patients.

Comment: §133.209(d)(8): Three commenters recommended deleting "to assume responsibility for" from the Level IV PASD team requirement.

Response: DSHS agrees and revises the language as recommended.

Comment: §133.209(d)(8)(A)(iii): Five commenters recommended the surgeon or surgeons with expertise in pelvic, urologic, and gastroenterological surgery be moved to the secondary team of the PASD multidisciplinary team.

Response: DSHS disagrees and declines to revise the rule. The subject matter expert physicians from the PAC workgroup agree that the obstetrics and gynecology physician could have expertise in the pelvic, urologic, and gastroenterological surgery to meet this requirement. A physician with surgical expertise is necessary for patient safety and outcomes.

Comment: §133.209(d)(8)(C)(ii): Two commenters recommended removing "on-site" from the requirement.

Response: DSHS agrees and revises the rule as requested.

Comment: §133.209(d)(8)(D): Two commenters stated the intent of this rule was to have representatives of each component of the PASD team, as opposed to representatives of the primary and secondary PASD response teams to participate. Language was proposed to add representatives "of each component" to the rule.

Response: DSHS agrees and revises the rule.

Comment: §133.209(d)(8)(E): Three commenters requested clarification for "expertise" and "lead" regarding the PASD team requirement.

Response: DSHS acknowledges these comments but declines to revise the rule. The standard dictionary definitions are sufficient.

Comment: §133.209(d)(8)(F) and §133.209(d)(8)(H): One commenter recommended revising the language to correct grammar.

Response: DSHS agrees and revises the language.

Comment: §133.209(d)(9): Three commenters recommended allowing Level III and Level IV facilities to utilize telemedicine and telehealth to meet the in-person visit requirements for behavioral health services and in-person psychiatrist visits at a Level IV.

Response: DSHS disagrees with the Level IV recommendation and declines to revise the language. The requirement that a behavioral health professional be on-site, at all times, for in-person visits, may be met by social services personnel. The language of "available for in-person visits when requested" for the psychiatrist allows the hospital flexibility in meeting the requirement yet ensures the maternal patient with a condition identified by the managing physician as requiring an in-person visit, receives the appropriate management and care.

Comment: §133.210(b): One commenter recommended the language that surveyors cannot be from the same Perinatal Care Region or Trauma Service Area or a contiguous region of the facility's location be removed. The concern is that the requirement will have a negative impact on the Texas hospitals and state-based survey organizations.

Response: DSHS disagrees and declines to revise the rule. DSHS is establishing requirements to limit surveyor conflicts of interest with the hospital undergoing the survey.

DSHS adds §133.202(34) to define "screening" for the new PASD requirements as agreed upon by the PAC workgroup and DSHS. The numbering for definitions is revised to reflect the addition.

DSHS revises §133.203(c) to state that the department "approves" the designation level for each location instead of "determines."

DSHS revises §133.203(d) to ensure that facilities meet the requirements for level designation.

DSHS revises the language in §133.203(g)(5) to state "must provide the survey team access to records and documentation regarding the QAPI Plan and process related to maternal patients."

DSHS revises the language in §133.204(m) to state "The department will approve designation of a facility that demonstrates the requirements are met" for consistency in §133.204.

DSHS revises the language in §133.204(q) to replace the word "determined" with "awarded." The words "recommends" and "will recommend" were added to §133.204(q)(2) and (3). The word "decision" was replaced with "recommendation" in §133.204(q)(2) and (4).

DSHS revises language in §133.205(e)(5) due to the changes in §133.205(d)(7) deleting the Maternal Program Manager from co-chairing the Maternal Oversight Committee (which was changed to Maternal Program Oversight in this adoption).

DSHS adds the word "inpatient" to replace "on-site" consultation and management in §133.209(d)(8)(C)(i). The PAC workgroup and DSHS agrees to change wording to limit the representative's response to inpatients only. The word "on-site" may have been interpreted to include outpatient services also.

DSHS adds "or this subchapter" in §133.210(e) to ensure all information and materials required in the maternal designation

rules, for review by DSHS or a survey organization, are considered confidential under applicable laws.

DSHS revises the word "Confidentially" in Texas Health and Safety Code, §241.184, to "Confidentiality; Privilege" in §133.210(e) to reflect the name of the statute.

STATUTORY AUTHORITY

The amendments and new rule are authorized by Texas Health and Safety Code, Chapter 241, which provides DSHS with authority to recommend rules establishing the levels of care for maternal care, establish a process for assignment or amendment of the levels of care to hospitals, divide the state into perinatal care regions, and facilitate transfer agreements through regional coordination; and by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of 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.

§133.202. Definitions.

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

(1) ACLS--Advanced Cardiovascular Life Support. A resuscitation course that was developed and is administered by the American Heart Association.

(2) Antepartum--The period beginning on the date of conception and ending on delivery.

(3) Attestation--A written statement, signed by the chief executive officer of the facility, verifying the results of a self-survey represent a complete and accurate assessment of the facility's capabilities required in this subchapter.

(4) Available--Relating to staff who can be contacted for consultation at all times without delay.

(5) Board-eligible--A physician who has completed a residency or fellowship and is eligible for board certification according to the applicable medical board.

(6) CAP--Corrective Action Plan. A plan for the facility developed by the department that describes the actions required of the facility to correct identified deficiencies to ensure the applicable designation requirements are met.

(7) Department--The Texas Department of State Health Services.

(8) Designation--A formal recognition by the department of a facility's maternal care capabilities and commitment for a period of three years.

(9) EMS--Emergency medical services. Services used to respond to an individual's perceived need for immediate medical care.

(10) Focused Survey--A department-defined modified facility survey by a department-approved survey organization or the department. The specific goal of this survey is to review designation requirements identified as not met to resolve a contingent designation or requirement deficiencies.

(11) Gestational age--The age of a fetus or embryo determined by the amount of time that has elapsed since the first day of the maternal patient's last menstrual period or the corresponding age of the gestation as estimated by a physician through a more accurate method.

(12) High-risk infant--A newborn that has a greater chance of complications because of conditions that occur during fetal development, pregnancy conditions of the mother, or problems that may occur during labor or birth.

(13) Immediately--Able to respond without delay, commonly referred to as STAT.

(14) Infant--A child from birth to one year of age.

(15) Intrapartum--During labor and delivery or childbirth.

(16) Inter-facility transport--Transfer of a patient from one healthcare facility to another healthcare facility.

(17) Lactation consultant--A health care professional who specializes in the clinical management of breastfeeding.

(18) Maternal--Pertaining to the mother.

(19) Maternal Program Oversight--A multidisciplinary process responsible for the administrative oversight of the maternal program and having the authority for approving the defined maternal program's policies, procedures, and guidelines for all phases of maternal care provided by the facility, to include defining the necessary staff competencies, monitoring to ensure maternal designation requirements are met, and the aggregate review of the maternal QAPI initiatives and outcomes. Maternal Program Oversight may be performed through the maternal program's performance improvement committee, multidisciplinary oversight committee, or other structured means.

(20) MFM--Maternal Fetal Medicine.

(21) MMD--Maternal Medical Director.

(22) MPM--Maternal Program Manager.

(23) Neonate--An infant from birth through 28 completed days after.

(24) Obstetrics--Related to pregnancy, childbirth, and the postpartum period.

(25) On-site--At the facility and able to arrive at the patient bedside for urgent requests.

(26) PCR--Perinatal Care Region. The PCRs are established for descriptive and regional planning purposes. The PCRs are geographically divided by counties and are integrated into the existing 22 Trauma Service Areas (TSAs) and the applicable Regional Advisory Council (RAC) of the TSA provided in §157.122 of this title (relating to Trauma Services Areas) and §157.123 of this title (relating to Regional Emergency Medical Services/Trauma Systems).

(27) Perinatal--Of, relating to, or being the period around childbirth, especially the five months before and one month after birth.

(28) PASD--Placenta Accreta Spectrum Disorder. A disorder that includes placenta accreta, placenta increta, and placenta percreta.

(29) POC--Plan of Correction. A report submitted to the department by the facility detailing how the facility will correct any deficiencies cited in the maternal designation site survey summary or documented in the self-attestation.

(30) Premature/prematurity--Birth at less than 37 weeks of gestation.

(31) Postpartum--The six-week period following pregnancy or delivery.

(32) QAPI Plan--Quality Assessment and Performance Improvement Plan. QAPI is a data-driven and proactive approach to qual-

ity improvement. It combines two approaches - Quality Assessment (QA) and Performance Improvement (PI). QA is a process used to ensure services are meeting quality standards and assuring care reaches a defined level. PI is the continuous study and improvement process designed to improve system and patient outcomes.

(33) RAC--Regional Advisory Council as described in §157.123 of this title.

(34) Screening--Evaluation for the presence or absence of a disease or condition.

(35) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(36) Telehealth service--A health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of health professional's license, certification, or entitlement, to a patient at a different physical location than the health professional using telecommunications or information technology as defined in Texas Occupations Code §111.001.

(37) Telemedicine medical service--A health care service delivered by a physician licensed in this state, or health professional acting under the delegation and supervision of a physician licensed in this state and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or technology as defined in Texas Occupations Code §111.001.

(38) TSA--Trauma Service Area as described in §157.122 of this title.

(39) Urgent--Requiring action or attention within 30 minutes of notification.

§133.203. General Requirements.

(a) The department reviews the applicant documents and approves the appropriate level of facility designation.

(b) A facility is defined under this subchapter as a single location where inpatients receive hospital services or each location if there are multiple buildings where inpatients receive hospital services and are covered under a single hospital license.

(c) Each location must be considered separately for designation and the department approves the designation level for each location based on the location's ability to demonstrate designation criteria are met.

(d) The department determines requirements for the levels of maternal designation. Facilities seeking Levels II, III, and IV maternal designation must meet department-approved requirements validated by a department-approved survey organization.

(e) Facilities seeking Level I maternal designation must submit a self-survey and attest to meeting department-approved requirements.

(f) The four levels of maternal designation are:

(1) Level I (Basic Care). The Level I maternal designated facility must:

(A) provide care for pregnant and postpartum patients who are generally healthy and do not have medical, surgical, or obstetrical conditions that present a significant risk of maternal morbidity or mortality; and

(B) have skilled personnel with documented training, competencies, and annual continuing education specific for the patient population served.

(2) Level II (Specialty Care). The Level II maternal designated facility must:

(A) provide care for pregnant and postpartum patients with medical, surgical, or obstetrical conditions that present a low to moderate risk of maternal morbidity or mortality; and

(B) have skilled personnel with documented training, competencies, and annual continuing education specific for the patient population served.

(3) Level III (Subspecialty Care). The Level III maternal designated facility must:

(A) provide care for pregnant and postpartum patients with low risk conditions to significant complex medical, surgical, or obstetrical conditions that present a high risk of maternal morbidity or mortality;

(B) ensure access to consultation to a full range of medical and maternal subspecialists and surgical specialists, and behavioral health specialists;

(C) ensure capability to perform major surgery on-site;

(D) have physicians with critical care training available at all times to actively collaborate with Maternal Fetal Medicine physicians or Obstetrics and Gynecology physicians with obstetrics training and privileges in maternal care;

(E) have skilled personnel with documented training, competencies, and annual continuing education, specific for the population served;

(F) facilitate transports; and

(G) provide outreach education related to trends identified through the QAPI Plan, specific requests, and system needs to lower level designated facilities, and as appropriate and applicable, to non-designated facilities, birthing centers, independent midwife practices, and prehospital providers.

(4) Level IV (Comprehensive Care). The Level IV maternal designated facility must:

(A) provide comprehensive care for pregnant and postpartum patients with low risk conditions to the most complex medical, surgical or obstetrical conditions and their fetuses, that present a high risk of maternal morbidity or mortality;

(B) ensure access to on-site consultation to a comprehensive range of medical and maternal subspecialists, surgical specialists, and behavioral health specialists;

(C) ensure capability to perform major surgery on-site;

(D) have physicians with critical care training available at all times to actively collaborate with Maternal Fetal Medicine physicians or Obstetrics and Gynecology physicians with obstetrics training, experience and privileges in maternal care;

(E) have a maternal fetal medicine critical care team with expertise and privileges to manage or co-manage highly complex, critically ill or unstable maternal patients;

(F) have a placenta accreta spectrum disorder multidisciplinary care team with expertise to complete risk factor screening, evaluation, diagnosis, consultation, and management of patients with

anticipated or unanticipated placenta accreta spectrum disorder, including postpartum care;

(G) have skilled personnel with documented training, competencies, and annual continuing education, specific for the patient population served;

(H) facilitate transports; and

(I) provide outreach education related to trends identified through the QAPI Plan, specific requests, and system needs to lower level designated facilities, and as appropriate and applicable, to non-designated facilities, birthing centers, independent midwife practices, and prehospital providers.

(g) Facilities seeking maternal designation must undergo an on-site or virtual survey as outlined in this section and:

(1) are responsible for scheduling a maternal designation survey through a department-approved survey organization;

(2) must notify the department of the maternal designation survey date;

(3) are responsible for expenses associated with the maternal designation survey;

(4) must not accept surveyors with any conflict of interest; and

(5) must provide the survey team access to records and documentation regarding the QAPI Plan and process related to maternal patients.

(h) If a conflict of interest is present for a facility seeking maternal designation, the facility must decline the assigned surveyor through the surveying organization. A conflict of interest exists when a surveyor has a direct or indirect financial, personal, or other interest which would limit or could reasonably be perceived as limiting the surveyor's ability to serve in the best interest of the public. The conflict of interest may include a surveyor that personally trained a key member of the facility's leadership in residency or fellowship, collaborated with a key member of the facility's leadership professionally, participated in a designation consultation with the facility, had a previous working relationship with the facility or facility leaders, or conducted a designation survey for the facility within the past four years.

(1) Surveyors cannot be from the same PCR or TSA region or a contiguous region of the facility's location.

(2) Designation site survey summary and record reviews performed by a surveyor with an identified conflict of interest may not be accepted by the department.

(i) The survey team evaluates the facility's evidence that department-approved designation requirements are met and documents all requirements that are not met in the maternal designation site survey and medical record reviews.

§133.204. Designation Process.

(a) A facility seeking maternal designation or renewal of designation must submit a completed application packet.

(1) The completed application packet includes:

(A) an accurate and complete maternal designation application for the requested level of designation;

(B) a completed maternal attestation and self-survey report for Level I applicants or the documented maternal designation site survey summary that validates that department-approved designation requirements are met and the medical record reviews for Levels II, III, and IV applicants, submitted to the department no later than 90 days after the maternal designation site survey date;

(C) If the facility has three or more department-approved designation requirements that are defined as not met, the facility must contact the department's designation unit within 10 business days to discuss the Plan of Correction (POC).

(D) if required by the department, a POC that addresses all designation requirements defined as "not met" in the maternal designation site survey summary. The POC must include:

(i) a statement of the cited designation requirement not met;

(ii) a statement describing the corrective action taken by the facility seeking maternal designation to meet the requirement;

(iii) the title of the individuals responsible for ensuring the corrective actions are implemented;

(iv) the date the corrective actions were implemented;

(v) how the corrective actions will be monitored; and

(vi) documented evidence that the POC was implemented within 90 days of the designation survey;

(E) written evidence of annual participation in the applicable PCRs; and

(F) any subsequent documents submitted by the date requested by the department.

(2) The application includes full payment of the non-refundable, non-transferrable designation fee listed:

(A) Level I maternal facility applicants, the fees are as follows:

(i) â‰¤100 licensed beds, the fee is $250.00; or

(ii) >100 licensed beds, the fee is $750.00.

(B) Level II maternal facility applicants, the fee is $1,500.00.

(C) Level III maternal facility applicants, the fee is $2,000.00.

(D) Level IV maternal facility applicants, the fee is $2,500.00.

(b) The application will not be processed if a facility seeking maternal designation fails to submit the required application documents and total designation fee.

(c) The maternal designation renewal process, or a request to designate at a different level of care, or a change in ownership, or change in physical address requires the facility to complete a designation renewal, which follows the same requirements outlined in subsection (a)(1) and (2) of this section.

(d) The facility must submit the required documents described in subsection (a)(1) and (2) of this section to the department no later than 90 days before the facility's current maternal designation expiration date for all designation renewals.

(e) The facility has the right to withdraw its application for maternal designation any time before a designation approval.

(f) The facility must seek maternal designation renewal to maintain continual designation and prevent an interruption in designation.

(g) The facility's maternal designation will expire if the facility fails to provide a complete maternal designation application packet to the department.

(h) The maternal designation application packet in its entirety, including any recommendations or follow-up from the department, and any opportunities for improvement must be a written element of the facility's maternal QAPI Plan, and must be reviewed through this process, which is all subject to confidentiality as described in Texas Health and Safety Code, §241.184, Confidentiality; Privilege.

(i) The department reviews the application packet to determine and approve the facility's level of maternal designation.

(j) The department defines the final maternal designation level awarded to the facility and this designation may be different than the level requested based on the maternal designation site survey summary.

(k) If the department determines the facility meets the requirements for maternal designation, the department provides the facility with a designation award letter and a designation certificate.

(1) The facility must display its maternal designation certificate in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(2) The facility must not alter the maternal designation certificate. Any alteration voids maternal designation for the remainder of that designation period.

(l) The survey organization must provide the facility with a written, signed maternal designation site survey summary, including medical record reviews, regarding their evaluation and validation of the facility's demonstration that maternal designation requirements are met. This maternal designation site survey summary must be forwarded to the facility no later than 30 days after the completion date of the survey. The facility is responsible for submitting a copy of the maternal designation site survey summary and medical record reviews to the department with the required documents to continue the designation process within 90 days of completion of the site survey.

(m) The department will approve designation of a facility that demonstrates the requirements are met.

(n) A maternal level of care designation must not be denied to a facility that meets the designation requirements for that level of care designation.

(o) If a facility does not meet the designation requirements for the level of designation requested, the department will designate the facility at the highest level for which designation requirements are met.

(p) If the department determines a facility does not meet the designation requirements for the level of designation requested, the department must provide written notification to the facility of the designation requirements not met and provide a Corrective Action Plan (CAP) to assist the facility in meeting the designation requirement. The CAP may include requiring the facility to have a focused survey or a complete re-survey.

(1) The facility must submit to the department reports required and outlined in the CAP. The department may require a second survey to ensure they meet the designation requirements. The cost of the second survey will be at the expense of the facility.

(2) If the department substantiates actions taken by the facility demonstrating documented evidence that designation requirements are met, the department removes the contingencies.

(q) If a facility disagrees with the designation level awarded by the department, it may request an appeal in writing to the EMS/Trauma Systems Section Director not later than 30 days after the designation award. The written appeal must be from the facility's Chief Executive Officer, Chief Medical Officer, or Chief Nursing Officer with documented evidence of how the facility meets the requirements for the requested designation level.

(1) The EMS/Trauma Systems Section will establish a three-person appeal panel and follow approved appeal panel guidelines to assess the facility's designation appeal as referenced in Texas Health and Safety Code §241.1836.

(2) If the designation appeal panel recommends the original determination, the EMS/Trauma Systems Section Director will give written notice of such to the facility not later than 30 days after the appeal panel's recommendation.

(3) If the designation appeal panel disagrees with the department's original designation determination, the panel will recommend the appropriate level of maternal designation to the department.

(4) If a facility disagrees with the designation appeal panel's recommendation regarding its designation level, the facility can request a second appeal review with the department's Associate Commissioner for Consumer Protection Division. If the Associate Commissioner upholds the designation appeal panel's recommendation, the designation status will remain the same. If the Associate Commissioner disagrees with the designation appeal panel's recommendation, the Associate Commissioner will define the appropriate level and award designation. The department will send a notification letter of the second appeal decision within 30 days of receiving the second appeal request.

(5) If the facility continues to disagree with the second level of appeal, the facility has a right to a hearing in the manner referenced in §133.121 of this title (relating to Enforcement Action).

(r) Exceptions and Notifications.

(1) A designated maternal facility must provide written or electronic notification of any significant change to the maternal program impacting patient care. The notification must be provided to the following:

(A) all emergency medical services (EMS) providers that transfer maternal patients to or from the designated maternal facility;

(B) the hospitals to which it customarily transfers out or transfers in maternal patients;

(C) applicable PCRs and RACs; and

(D) the department.

(2) If the designated maternal facility is unable to comply with requirements to maintain its current designation, it must submit to the department a POC as described in subsection (a)(1)(D)(i) - (vi) of this section, and a request for a temporary exception to the designation requirements. Any request for an exception must be submitted in writing from the Chief Executive Officer of the facility and define the facility's timeline to meet the designation requirements. The department reviews the request and the POC, and either grants the exception, with a specific timeline based on the public interest, geographic maternal care capabilities, and access to care, or denies the exception. If the facility is not granted an exception, or it does not meet the designation

requirements at the end of the exception period, the department will elect one of the following:

(A) re-designate the facility at the level appropriate to its revised capabilities;

(B) outline an agreement with the facility to satisfy all designation requirements for the level of care designation within a time specified under the agreement, which may not exceed the first anniversary of the effective date of the agreement; or

(C) waive one specific designation requirement for a level of care designation if the facility meets all other designation requirements for the level of care designation and the department determines the waiver is justified considering:

(i) the expected impact on accessibility of maternal care in the geographic area served by the facility if the waiver is not granted and the expected impact on the quality of care and patient safety; or

(ii) whether these services can be met by other facilities in the area or with telehealth/telemedicine services.

(3) Waivers expire with the expiration of the current designation but may be renewed. The department may specify any conditions for ongoing reporting during this time.

(4) The department maintains a current list on their internet website of designated facilities that have an approved waiver with the department and an aggregated list of the requirements waived.

(5) Facilities that have contingency agreements or an approved waiver with the department must post on the facility's internet website the nature and general terms of the agreement.

(s) An application for a higher or lower level of maternal designation may be submitted to the department at any time.

(1) A designated maternal facility that is increasing its maternal capabilities may choose to apply for a higher level of designation at any time. The facility must follow the designation process as described in subsection (a)(1) and (2) of this section to apply for the higher level.

(2) A designated maternal facility that is unable to maintain the facility's current level of maternal designation may choose to apply for a lower level of designation at any time.

(t) If the facility is relinquishing its maternal designation, the facility must provide 30 days written, advance notice of the relinquishment to the department, the applicable PCRs/RACs, EMS providers, and facilities it customarily transfers out or transfers in maternal patients. The facility is responsible for continuing to provide maternal care services or ensuring a plan for maternal care continuity for the 30 days following the written notice of relinquishing its maternal designation.

(u) A hospital providing maternal services must not use the terms "designated maternal facility," or similar terminology in its signs, advertisements, facility internet website, social media, or in the printed materials and information it provides to the public, unless the facility is currently designated at that level of maternal care.

(v) During a virtual, on-site or focused designation review, conducted by the department or survey organization, the department or surveyor has the right to review and evaluate maternal patient records, maternal multidisciplinary QAPI Plan documents, and any action specific to improving maternal care and outcomes, as well as any other documents relevant to maternal care in a designated maternal facility or facility seeking maternal facility designation to validate designation requirements are met.

(w) The department and survey organization will comply with all relevant laws related to the confidentiality of records.

(x) The department may deny, suspend, or revoke designation if a designated maternal facility ceases to provide services to meet or maintain the designation requirements of this section.

§133.205. Program Requirements.

(a) Maternal Program Philosophy. Designated facilities must have a family centered philosophy. The facility environment for perinatal care must meet the physiologic and psychosocial needs of the mothers, infants, and families. Parents must have reasonable access to their infants at all times and be encouraged to participate in the care of their infants.

(b) Maternal Program Plan. The facility must develop a written maternal operational plan for the maternal program that includes a detailed description of the scope of services and clinical resources available for all maternal patients and families. The plan will define the maternal patient population evaluated, treated, transferred, or transported by the facility consistent with clinical guidelines based on current standards of maternal practice ensuring the health and safety of patients.

(1) The written Maternal Program Plan must be reviewed and approved by Maternal Program Oversight and be submitted to the facility's governing body for review and approval. The governing body must ensure that the requirements of this section are implemented and enforced.

(2) The written Maternal Program Plan must include, at a minimum:

(A) clinical guidelines based on current standards of maternal practice, and policies and procedures that are adopted, implemented, and enforced by the maternal program;

(B) a process to ensure and validate that these clinical guidelines based on current standards of maternal practice, policies, and procedures are reviewed and revised a minimum of every three years;

(C) written triage, stabilization, and transfer guidelines for pregnant and postpartum patients that include consultation and transport services;

(D) written guidelines or protocols for prevention, early identification, early diagnosis, and therapy for conditions that place the pregnant or postpartum patient at risk for morbidity or mortality;

(E) the role and scope of telehealth/telemedicine practices if utilized, including:

(i) documented and approved written policies and procedures that outline the use of telehealth/telemedicine for inpatient hospital care, or for inpatient consultation, including appropriate situations, scope of care, and documentation that is monitored through the QAPI Plan and process; and

(ii) written and approved procedures to gain informed consent from the patient or designee for the use of telehealth/telemedicine, if utilized, that are monitored for compliance;

(F) written guidelines for discharge planning instructions and appropriate follow up appointments for all mothers and infants;

(G) written guidelines for the hospital disaster response, including a defined mother and infant evacuation plan and process to

relocate mothers and infants to appropriate levels of care with identified resources, and this process must be evaluated annually to ensure maternal care can be sustained and adequate resources are available;

(H) requirements for minimal credentials for all staff participating in the care of maternal patients;

(I) provisions for providing continuing staff education, including annual competency and skills assessment that is appropriate for the patient population served;

(J) a perinatal staff registered nurse as a representative on the nurse staffing committee under §133.41 of this title (relating to Hospital Functions and Services); and

(K) the availability of all necessary equipment and services to provide the appropriate level of care and support of the patient population served.

(3) The facility must have a documented QAPI Plan. The maternal program must measure, analyze, and track quality indicators and other aspects of performance that the facility adopts or develops that reflect processes of care and is outcome based.

(A) The Chief Executive Officer, Chief Medical Officer, and Chief Nursing Officer must implement a culture of safety for the facility and ensure adequate resources are allocated to support a concurrent, data-driven maternal QAPI Plan.

(B) The facility must demonstrate that the maternal QAPI Plan consistently assesses the provision of maternal care provided. The assessment will identify variances in care, the impact to the patient, and the appropriate levels of review. This process will identify opportunities for improvement and develop a plan of correction to address the variances in care or the system response. An action plan will track and analyze data through resolution or correction of the identified variance.

(C) Maternal facilities must review their incidence and management of placenta accreta spectrum disorder through the QAPI Plan and report the incidence and outcomes through the Maternal Program Oversight.

(D) The Maternal Medical Director (MMD) must have the authority to make referrals for peer review, receive feedback from the peer review process, and ensure maternal physician representation in the peer review process for maternal cases.

(E) The MMD and the Maternal Program Manager (MPM) must participate in the PCR meetings, QAPI regional initiatives, and regional collaboratives, and submit requested data to assist with data analysis to evaluate regional outcomes as an element of their maternal QAPI Plan.

(F) The facility must have documented evidence of maternal QAPI summary reports reviewed and reported by Maternal Program Oversight that monitor and ensure the provision of services or procedures through the telehealth and telemedicine, if utilized, is in accordance with the standard of care applicable to the provision of the same service or procedure in an in-person setting.

(G) The facility must have documented evidence of maternal QAPI summary reports to support that aggregate maternal data are consistently reviewed to identify developing trends, opportunities for improvement, and necessary corrective actions. Summary reports must be provided through Maternal Program Oversight, available for site surveyors, and submitted to the department as requested.

(c) Medical Staff. The facility must have an organized maternal program that is recognized by the facility's medical staff and approved by the facility's governing body.

(1) The credentialing of the maternal medical staff must include a process for the delineation of privileges for maternal care.

(2) The maternal medical staff must participate in ongoing staff and team-based education and training in the care of the maternal patient.

(d) Medical Director. There must be an identified MMD and an identified Transport Medical Director (TMD) if the facility has its own transport program. The MMD and TMD must be credentialed by the facility for treatment of maternal patients and have their responsibilities and authority defined in a job description. The MMD is responsible for the provision of maternal care services and:

(1) examining qualifications of medical staff requesting maternal privileges and making recommendations to the appropriate committee for such privileges;

(2) assuring maternal medical staff competency in managing obstetrical emergencies, complications and resuscitation techniques;

(3) monitoring maternal patient care from transport if applicable, to admission, stabilization, operative intervention(s) if applicable, through discharge, and inclusive of the QAPI Plan;

(4) participating in ongoing maternal staff and team-based education and training in the care of the maternal patient;

(5) overseeing the inter-facility maternal transport;

(6) collaborating with the MPM in areas to include developing or revising policies, procedures and guidelines, assuring medical staff and personnel competency, education and training; and the QAPI Plan;

(7) frequently leading the maternal QAPI meetings with the MPM and participating in Maternal Program Oversight and other maternal meetings as appropriate;

(8) ensuring that the QAPI Plan is specific to maternal and fetal care, is ongoing, data-driven and outcome-based;

(9) participating as a clinically active and practicing physician in maternal care at the facility where medical director services are provided;

(10) maintaining active staff privileges as defined in the facility's medical staff bylaws; and

(11) developing collaborative relationships with other MMD(s) of designated facilities within the applicable Perinatal Care Region.

(e) MPM. The facility must identify a MPM who has the authority and oversight responsibilities written in his or her job description for the provision of maternal services through all phases of care, including discharge and identifying variances in care for inclusion in the QAPI Plan and:

(1) be a registered nurse with perinatal experience;

(2) be a clinically active and practicing registered nurse participating in maternal care at the facility where program manager services are provided;

(3) has the authority and responsibility to monitor the provision of maternal patient care services from admission, stabilization, operative intervention(s) if applicable, through discharge, and inclusive of the QAPI Plan;

(4) collaborates with the MMD in areas to include developing or revising policies, procedures and guidelines; assuring staff competency, education, and training and the QAPI Plan;

(5) frequently leads the maternal QAPI meetings and participates in Maternal Program Oversight and other maternal meetings as appropriate;

(6) ensures that the QAPI Plan is specific to maternal and fetal care, is ongoing, data-driven and outcome based, including telehealth/telemedicine utilization, when used; and

(7) develops collaborative relationships with other MPM(s) of designated facilities within the applicable Perinatal Care Region.

§133.206. Maternal Designation Level I.

(a) Level I (Basic Care). The Level I maternal designated facility must:

(1) provide care for pregnant and postpartum patients who are generally healthy, and do not have medical, surgical, or obstetrical conditions that present a significant risk of maternal morbidity or mortality; and

(2) have skilled personnel with documented training, competencies, and annual continuing education specific for the patient population served.

(b) Maternal Medical Director (MMD). The MMD must be a physician who:

(1) is a family medicine physician or an obstetrics and gynecology physician, with obstetrics training and experience, and with privileges in maternal care;

(2) demonstrates administrative skills and oversight of the Quality Assessment and Performance Improvement (QAPI) Plan; and

(3) has completed annual continuing education specific to maternal care.

(c) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service.

(A) Pregnant patients who are identified at high risk of delivering a neonate that requires a higher level of neonatal care than the scope of their neonatal facility must be transferred to a higher level neonatal designated facility before delivery unless the transfer is unsafe.

(B) Pregnant or postpartum patients identified with conditions or complications that require a higher level of maternal care must be transferred to a higher level maternal designated facility unless the transfer is unsafe.

(2) Provide care for patients with uncomplicated pregnancies with the capability to detect, stabilize, and initiate management of unanticipated maternal-fetal or maternal problems that occur during the antepartum, intrapartum, or postpartum period until the patient can be transferred to a higher level of neonatal or maternal care.

(3) An obstetrics and gynecology physician with obstetrics training and experience must be available for consultation, at all times.

(4) Medical, surgical and behavioral health specialists must be available at all times for consultation appropriate to the patient population served.

(5) Ensure that a qualified physician or certified nurse midwife with appropriate physician back-up is available to attend all deliveries or other obstetrical emergencies.

(6) The family medicine physician, primary physician, or certified nurse midwife with competence in the care of pregnant patients, whose credentials have been reviewed by the MMD and is on call:

(A) must arrive at the patient bedside within 30 minutes of an urgent request; and

(B) must complete annual continuing education, specific to the care of pregnant and postpartum patients, including complicated conditions.

(7) Certified nurse midwives, physician assistants and nurse practitioners who provide care for maternal patients:

(A) must operate under guidelines reviewed and approved by the MMD; and

(B) must have a formal arrangement with a physician with obstetrics training or experience, and with maternal privileges who must:

(i) provide back-up and consultation;

(ii) arrive at the patient bedside within 30 minutes of an urgent request; and

(iii) meet requirements for medical staff as described in §133.205 of this title (relating to Program Requirements) respectively.

(8) An on-call schedule of providers, back-up providers, and provision for patients without a physician must be readily available to facility and maternal staff and posted on the labor and delivery unit.

(9) Ensure that physicians providing back-up coverage must arrive at the patient bedside within 30 minutes of an urgent request.

(10) Appropriate anesthesia, laboratory, pharmacy, radiology, respiratory therapy, ultrasonography and blood bank services must be available on a 24-hour basis as described in §133.41 of this title (relating to Hospital Functions and Services) respectively.

(A) Anesthesia personnel with training and experience in obstetric anesthesia must be available at all times and arrive to the patient bedside within 30 minutes of an urgent request.

(B) Laboratory and blood bank services must have guidelines or protocols for:

(i) massive blood component transfusion;

(ii) emergency release of blood components; and

(iii) management of multiple blood component therapy.

(C) Medical Imaging Services.

(i) If preliminary reading of imaging studies pending formal interpretation is performed, the preliminary findings must be documented in the medical record.

(ii) There must be regular monitoring of the preliminary versus final reading in the QAPI Plan.

(iii) Basic ultrasonographic imaging for maternal or fetal assessment, including interpretation available at all times.

(iv) A portable ultrasound machine immediately available at all times to the labor and delivery and antepartum unit.

(D) A pharmacist must be available for consultation at all times.

(11) Obstetrical Services.

(A) The ability to begin an emergency cesarean delivery and ensure the availability of a physician with the training, skills, and privileges to perform the surgery within a time period consistent with current standards of professional practice and maternal care.

(B) Ensure the availability and interpretation of nonstress testing, and electronic fetal monitoring.

(C) A trial of labor for patients with prior cesarean delivery must have the capability of anesthesia, cesarean delivery, and maternal resuscitation on-site during the trial of labor.

(12) Resuscitation. The facility must have written policies and procedures specific to the facility for the stabilization and resuscitation of the pregnant or postpartum patient based on current standards of professional practice. The facility:

(A) ensures staff members, not responsible for the neonatal resuscitation, are immediately available on-site at all times who demonstrate current status of successful completion of ACLS, or a department-approved equivalent course, and the skills to perform a complete resuscitation; and

(B) ensures that resuscitation equipment, including difficult airway management equipment for pregnant and postpartum patients, is immediately available at all times to the labor and delivery, antepartum and postpartum areas.

(13) The facility must have a written hospital preparedness and management plan for patients with placenta accreta spectrum disorder who are undiagnosed until delivery, including educating hospital and medical staff who may be involved in the treatment and management of placenta accreta spectrum disorder about risk factors, diagnosis, and management.

(14) The facility must have written guidelines or protocols for various conditions that place the pregnant or postpartum patient at risk for morbidity or mortality, including promoting prevention, early identification, early diagnosis, therapy, stabilization, and transfer. The guidelines or protocols must address a minimum of:

(A) massive hemorrhage and transfusion of the pregnant or postpartum patient in coordination of the blood bank, including management of unanticipated hemorrhage or coagulopathy;

(B) obstetrical hemorrhage, including promoting the identification of patients at risk, early diagnosis, and therapy to reduce morbidity and mortality;

(C) placenta accreta spectrum disorder, including team education, risk factor screening, evaluation, diagnosis, fostering telemedicine medical services and referral as appropriate, treatment and multidisciplinary management of both anticipated and unanticipated placenta accreta spectrum disorder cases, including postpartum care;

(D) hypertensive disorders in pregnancy, including eclampsia and the postpartum patient to promote early diagnosis and treatment to reduce morbidity and mortality;

(E) sepsis or systemic infection in the pregnant or postpartum patient;

(F) venous thromboembolism in the pregnant and postpartum patient, including assessment of risk factors, prevention, early diagnosis and treatment;

(G) shoulder dystocia, including assessment of risk factors, counseling of patient, and multidisciplinary management; and

(H) behavioral health disorders, including depression, substance abuse and addiction that includes screening, education, consultation with appropriate personnel and referral.

(15) Perinatal Education. A registered nurse with experience in maternal care must provide the supervision and coordination of staff education. Perinatal education for high risk events must be provided at frequent intervals to prepare medical, nursing, and ancillary staff for these emergencies.

(16) Support personnel with knowledge and skills in breastfeeding and lactation to meet the needs of maternal patients must be available at all times.

(17) Social services, pastoral care and bereavement services must be provided as appropriate to meet the needs of the patient population served.

(18) Dietician or nutritionist available with appropriate training and experience for population served in compliance with the requirements in §133.41 of this title.

§133.207. Maternal Designation Level II.

(a) Level II (Specialty Care). The Level II maternal designated facility must:

(1) provide care for pregnant and postpartum patients with medical, surgical, or obstetrical conditions that present a low to moderate risk of maternal morbidity or mortality; and

(2) have skilled personnel with documented training, competencies, and annual continuing education specific for the patient population served.

(b) Maternal Medical Director (MMD). The MMD must be a physician who:

(1) is a family medicine physician, an obstetrics and gynecology physician, or maternal fetal medicine physician, all with obstetrics training and experience, and with privileges in maternal care;

(2) demonstrates administrative skills and oversight of the Quality Assessment and Performance Improvement (QAPI) Plan; and

(3) has completed annual continuing education specific to maternal care, including complicated conditions.

(c) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service.

(A) Pregnant patients identified at high risk of delivering a neonate that requires a higher level of neonatal care than the scope of their neonatal facility must be transferred to a higher level neonatal designated facility before delivery unless the transfer is unsafe.

(B) Pregnant or postpartum patients identified with conditions or complications that the managing physician determines require patient transfer to a higher level of maternal care must be transferred to a higher level maternal designated facility unless the transfer is unsafe.

(2) Provide care for pregnant patients with the capability to detect, stabilize, and initiate management of unanticipated maternal-fetal or maternal problems that occur during the antepartum, intra-

partum, or postpartum period until the patient can be transferred to a higher level of neonatal or maternal care.

(3) An obstetrics and gynecology physician or family medicine physician with obstetrics training and experience, including operative training, and with maternal privileges, must be available at all times and arrive at the patient bedside within 30 minutes of an urgent request. Facilities that utilize family medicine physicians in this role must have a written plan for responding to obstetrical emergencies that require services or procedures outside the scope of privileges granted to the family physician, and regularly monitor outcomes in their QAPI Plan.

(4) A board-certified or board-eligible maternal fetal medicine physician must be available at all times for consultation.

(5) Medical and surgical physicians must be available at all times and arrive at the patient bedside within 30 minutes of an urgent request.

(6) Specialists, including behavioral health, must be available at all times for consultation appropriate to the patient population served.

(7) Ensure that a qualified physician or certified nurse midwife with appropriate physician back-up is available to attend all deliveries or other obstetrical emergencies.

(8) The primary provider caring for a pregnant or postpartum patient who is a family medicine physician with obstetrics training and experience, obstetrics and gynecology physician, maternal fetal medicine physician, or a certified nurse midwife, physician assistant or nurse practitioner with appropriate physician back-up, whose credentials have been reviewed by the MMD and is on-call:

(A) must arrive at the patient bedside within 30 minutes of an urgent request; and

(B) must complete annual continuing education, specific to the care of pregnant and postpartum patients, including complicated conditions.

(9) Certified nurse midwives, physician assistants and nurse practitioners who provide care for maternal patients:

(A) must operate under guidelines reviewed and approved by the MMD; and

(B) must have a formal arrangement with a physician with obstetrics training or experience, and with maternal privileges who must:

(i) provide back-up and consultation;

(ii) arrive at the patient bedside within 30 minutes of an urgent request; and

(iii) meet requirements for medical staff as described in §133.205 of this title (relating to Program Requirements) respectively.

(10) An on-call schedule of providers, back-up providers, and provision for patients without a physician must be readily available to facility and maternal staff and posted on the labor and delivery unit.

(11) Ensure that the physician providing back-up coverage must arrive at the patient bedside within 30 minutes of an urgent request.

(12) The appropriate anesthesia, laboratory, pharmacy, radiology, respiratory therapy, ultrasonography and blood bank services must be available on a 24-hour basis as described in §133.41 of this title (relating to Hospital Functions and Services) respectively.

(A) Anesthesia personnel with training and experience in obstetric anesthesia must be available at all times and arrive to the patient bedside within 30 minutes of an urgent request.

(B) An anesthesiologist with training or experience in obstetric anesthesia must be available at all times for consultation.

(C) Laboratory and blood bank services must be capable of:

(i) providing ABO-Rh specific or O-Rh negative blood, fresh frozen plasma or cryoprecipitate on-site at all times;

(ii) implementing a massive transfusion protocol;

(iii) ensuring guidelines for emergency release of blood components; and

(iv) managing multiple blood component therapy.

(D) Medical Imaging Services.

(i) If preliminary reading of imaging studies pending formal interpretation is performed, the preliminary findings must be documented in the medical record.

(ii) There must be regular monitoring of the preliminary versus final reading in the QAPI Plan.

(iii) Computed Tomography (CT) imaging and interpretation available at all times.

(iv) Basic ultrasonographic imaging for maternal or fetal assessment, including interpretation must be available at all times.

(v) A portable ultrasound machine immediately available at all times to the labor and delivery and antepartum unit.

(E) A pharmacist must be available for consultation at all times.

(13) Obstetrical Services.

(A) The ability to begin an emergency cesarean delivery and ensure the availability of a physician with the training, skills, and privileges to perform the surgery within a time period consistent with current standards of professional practice and maternal care.

(B) Ensure the availability and interpretation of nonstress testing, and electronic fetal monitoring.

(C) A trial of labor for patients with prior cesarean delivery must have the capability of anesthesia, cesarean delivery, and maternal resuscitation on-site during the trial of labor.

(14) Resuscitation. The facility must have written policies and procedures specific to the facility for the stabilization and resuscitation of the pregnant or postpartum patient based on current standards of professional practice. The facility:

(A) ensures staff members, not responsible for the neonatal resuscitation, are immediately available on-site at all times who demonstrate current status of successful completion of ACLS, or a department-approved equivalent course, and the skills to perform a complete resuscitation; and

(B) ensures that resuscitation equipment, for pregnant and postpartum patients, is readily available in the labor and delivery, antepartum and postpartum areas. Difficult airway management equipment must be immediately available at all times to these areas.

(15) The facility must have a written hospital preparedness and management plan for patients with placenta accreta spectrum disorder who are undiagnosed until delivery, including educating hospital and medical staff who may be involved in the treatment and manage-

ment of placenta accreta spectrum disorder about risk factors, diagnosis, and management.

(16) The facility must have written guidelines or protocols for various conditions that place the pregnant or postpartum patient at risk for morbidity or mortality, including promoting prevention, early identification, early diagnosis, therapy, stabilization, and transfer. The guidelines or protocols must address a minimum of:

(A) massive hemorrhage and transfusion of the pregnant or postpartum patient in coordination of the blood bank, including management of unanticipated hemorrhage or coagulopathy;

(B) obstetrical hemorrhage, including promoting the identification of patients at risk, early diagnosis, and therapy to reduce morbidity and mortality;

(C) placenta accreta spectrum disorder, including team education, risk factor screening, evaluation, diagnosis, fostering telemedicine medical services and referral as appropriate, treatment and multidisciplinary management of both anticipated and unanticipated placenta accreta spectrum disorder cases, including postpartum care;

(D) hypertensive disorders in pregnancy, including eclampsia and the postpartum patient to promote early diagnosis and treatment to reduce morbidity and mortality;

(E) sepsis or systemic infection in the pregnant or postpartum patient;

(F) venous thromboembolism in the pregnant and postpartum patient, including assessment of risk factors, prevention, early diagnosis and treatment;

(G) shoulder dystocia, including assessment of risk factors, counseling of patient, and multidisciplinary management; and

(H) behavioral health disorders, including depression, substance abuse and addiction that includes screening, education, consultation with appropriate personnel and referral.

(17) The facility must have nursing leadership and staff with training and experience in the provision of maternal nursing care who must coordinate with respective neonatal services.

(18) Perinatal Education. A registered nurse with experience in maternal care, including moderately complex and ill obstetric patients, must provide the supervision and coordination of staff education. Perinatal education for high risk events must be provided at frequent intervals to prepare medical, nursing, and ancillary staff for these emergencies.

(19) Support personnel with knowledge and skills in breastfeeding and lactation to meet the needs of maternal patients must be available at all times.

(20) Social services, pastoral care and bereavement services must be provided as appropriate to meet the needs of the patient population served.

(21) Dietician or nutritionist available with appropriate training and experience for population served in compliance with the requirements in §133.41 of this title.

§133.208. Maternal Designation Level III.

(a) A Level III (Subspecialty Care). The Level III maternal designated facility must:

(1) provide care for pregnant and postpartum patients with low risk conditions to significant complex medical, surgical or obstetrical conditions that present a high risk of maternal morbidity or mortality;

(2) ensure access to consultation to a full range of medical and maternal subspecialists, surgical specialists, and behavioral health specialists;

(3) ensure capability to perform major surgery on-site;

(4) have physicians with critical care training available at all times to actively collaborate with Maternal Fetal Medicine physicians or Obstetrics and Gynecology Physicians with obstetrics training and privileges in maternal care;

(5) have skilled personnel with documented training, competencies, and annual continuing education, specific for the population served;

(6) facilitate transports; and

(7) provide outreach education related to trends identified through the QAPI Plan, specific requests, and system needs to lower level designated facilities, and as appropriate and applicable, to non-designated facilities, birthing centers, independent midwife practices, and prehospital providers.

(b) Maternal Medical Director (MMD). The MMD must be a physician who:

(1) is a board-certified obstetrics and gynecology physician with obstetrics training and experience, or a board-certified maternal fetal medicine physician, both with privileges in maternal care;

(2) demonstrates administrative skills and oversight of the QAPI Plan; and

(3) has completed annual continuing education specific to maternal care, including complicated conditions.

(c) If the facility has its own transport program, there must be an identified Transport Medical Director (TMD). The TMD must be a physician who is a board-certified maternal fetal medicine specialist or board-certified obstetrics and gynecology physician with privileges and experience in obstetrical care and maternal transport.

(d) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service.

(A) Pregnant patients who are identified at high risk of delivering a neonate that requires a higher level of neonatal care than the scope of their neonatal facility must be transferred to a higher level neonatal designated facility before delivery unless the transfer is unsafe.

(B) Pregnant or postpartum patients identified with conditions or complications that require a higher level of maternal care must be transferred to a higher level maternal designated facility unless the transfer is unsafe.

(2) Provide care for pregnant patients with the capability to detect, stabilize, and initiate management of unanticipated maternal-fetal or maternal problems that occur during the antepartum, intrapartum, or postpartum period until the patient can be transferred to a higher level of neonatal or maternal care.

(3) Supportive and emergency care must be delivered by appropriately trained personnel for unanticipated maternal-fetal problems that occur requiring a higher level of maternal care, until the patient is stabilized or transferred;

(4) An obstetrics and gynecology physician with maternal privileges must be on-site at all times and available for urgent situations.

(5) A board-certified or board-eligible Maternal Fetal Medicine physician with inpatient privileges must be available at all times for inpatient consultation and arrive at the patient bedside within 30 minutes of an urgent request to co-manage patients.

(A) When telehealth or telemedicine is utilized for maternal fetal medicine co-management for non-urgent inpatient situations where an in-person response is not required, the facility must have the following:

(i) a written plan for the appropriate use of telehealth/telemedicine for inpatient hospital care that is compliant with the Texas Medical Board Telemedicine rules, Texas Administrative Code, Title 22, Chapter 174, and the Texas Occupations Code, Chapter 111;

(ii) a process for informed consent and agreement from the patient for the use of telehealth or telemedicine; and

(iii) a maternal fetal medicine physician with inpatient privileges at the facility, who regularly participates in the on-site care of patients at the facility, has access to the patient's medical record, and participates as needed in the QAPI Plan and process for the facility's maternal program.

(B) The facility has processes to monitor the compliance and outcomes of maternal telehealth and telemedicine encounters through the QAPI Plan.

(C) The use of telemedicine for on call consultation does not substitute for the requirement of maternal fetal medicine availability for in-person consultation on complex and critically ill patients on a regular basis.

(6) Intensive Care Services. The facility must provide critical care services for critically ill pregnant or postpartum patients, including fetal monitoring in the Intensive Care Unit (ICU), respiratory failure and ventilator support, procedure for emergency cesarean, coordination of nursing care, and consultative or co-management roles to facilitate collaboration.

(7) Level III maternal designated facilities that serve as referral centers for placenta accreta spectrum disorder must fulfill all of the Level IV requirements for a Placenta Accreta Spectrum Disorder Team defined in §133.209 of this title (relating to Maternal Designation Level IV).

(8) Medical and surgical physicians, including critical care specialists, must be available at all times and arrive at the patient bedside within 30 minutes of an urgent request.

(9) Consultation by a behavioral health professional, with training or experience in maternal counseling must be available at all times and arrive by telemedicine or in-person when requested within a time period consistent with current standards of professional practice and maternal care.

(10) Ensure that a qualified physician, or a certified nurse midwife with appropriate physician back-up, is available to attend all deliveries or other obstetrical emergencies.

(11) The primary provider caring for a pregnant or postpartum patient who is a family medicine physician with obstetrics training and experience, obstetrics and gynecology physician, maternal fetal medicine physician, or a certified nurse midwife, physician assistant or nurse practitioner with appropriate physician back-up, whose credentials have been reviewed by the MMD and is on call:

(A) must arrive at the patient bedside within 30 minutes for an urgent request; and

(B) must complete annual continuing education, specific to the care of pregnant and postpartum patients, including complicated and critical conditions.

(12) Certified nurse midwives, physician assistants and nurse practitioners who provide care for maternal patients:

(A) must operate under guidelines reviewed and approved by the MMD; and

(B) must have a formal arrangement with a physician with obstetrics training or experience, and with maternal privileges who must:

(i) provide back-up and consultation;

(ii) arrive at the patient bedside within 30 minutes of an urgent request; and

(iii) meet requirements for medical staff as described in §133.205 of this title (relating to Program Requirements) respectively.

(13) An on-call schedule of providers, back-up providers, and provision for patients without a physician must be readily available to facility and maternal staff and posted on the labor and delivery unit.

(14) Ensure that the physician providing back-up coverage must arrive at the patient bedside within 30 minutes for an urgent request.

(15) Anesthesia Services must comply with the requirements found at §133.41 of this title (relating to Hospital Functions and Services) and must have:

(A) anesthesia personnel with experience and expertise in obstetric anesthesia must be available on-site at all times;

(B) a board-certified anesthesiologist with training or experience in obstetric anesthesia in charge of obstetric anesthesia services;

(C) a board-certified or board-eligible anesthesiologist with training or experience in obstetric anesthesia, including critically ill obstetric patients available for consultation at all times, and arrive at the patient bedside within 30 minutes for urgent requests; and

(D) anesthesia personnel on call, including back-up contact information, posted and readily available to the facility and maternal staff and posted in the labor and delivery area.

(16) Laboratory Services must comply with the requirements found at §133.41 of this title and must have:

(A) laboratory personnel on-site at all times;

(B) a blood bank capable of:

(i) providing ABO-Rh specific or O-Rh negative blood, fresh frozen plasma, cryoprecipitate, and platelet components on-site at the facility at all times;

(ii) implementing a massive transfusion protocol;

(iii) ensuring guidelines for emergency release of blood components; and

(iv) managing multiple blood component therapy; and

(C) perinatal pathology services available.

(17) Medical Imaging Services must comply with the requirements found at §133.41 of this title and must have:

(A) personnel appropriately trained in the use of x-ray equipment available on-site at all times;

(B) advanced imaging, including computed tomography (CT), magnetic resonance imaging (MRI), and echocardiography available at all times;

(C) interpretation of CT, MRI and echocardiography within a time period consistent with current standards of professional practice and maternal care;

(D) basic ultrasonographic imaging for maternal or fetal assessment, including interpretation available at all times; and

(E) a portable ultrasound machine available in the labor and delivery and antepartum unit.

(18) Pharmacy services must comply with the requirements found in §133.41 of this title and must have a pharmacist with experience in perinatal pharmacology available at all times.

(19) Respiratory Therapy Services must comply with the requirements found at §133.41 of this title and have a respiratory therapist immediately available on-site at all times.

(20) Obstetrical Services.

(A) The ability to begin an emergency cesarean delivery within a time period consistent with current standards of professional practice and maternal care.

(B) Ensure the availability and interpretation of nonstress testing, and electronic fetal monitoring.

(C) A trial of labor for patients with prior cesarean delivery must have the capability of anesthesia, cesarean delivery, and maternal resuscitation on-site during the trial of labor.

(21) Resuscitation. The facility must have written policies and procedures specific to the facility for the stabilization and resuscitation of the pregnant or postpartum patient based on current standards of professional practice. The facility:

(A) ensures staff members, not responsible for the neonatal resuscitation, are immediately available on-site at all times who demonstrate current status of successful completion of ACLS, or a department-approved equivalent course, and the skills to perform a complete resuscitation; and

(B) ensures that resuscitation equipment, including difficult airway management equipment for pregnant and postpartum patients, is readily available in the labor and delivery, antepartum and postpartum areas.

(22) The facility must have a written hospital preparedness and management plan for patients with placenta accreta spectrum disorder who are undiagnosed until delivery, including educating hospital and medical staff who may be involved in the treatment and management of placenta accreta spectrum disorder about risk factors, diagnosis, and management.

(23) The facility must have written guidelines or protocols for various conditions that place the pregnant or postpartum patient at risk for morbidity or mortality, including promoting prevention, early identification, early diagnosis, therapy, stabilization, and transfer. The guidelines or protocols must address a minimum of:

(A) massive hemorrhage and transfusion of the pregnant or postpartum patient in coordination of the blood bank, including management of unanticipated hemorrhage or coagulopathy;

(B) obstetrical hemorrhage, including promoting the identification of patients at risk, early diagnosis, and therapy to reduce morbidity and mortality;

(C) placenta accreta spectrum disorder, including team education, risk factor screening, evaluation, diagnosis, fostering telemedicine medical services and referral as appropriate, treatment and multidisciplinary management of both anticipated and unanticipated placenta accreta spectrum disorder cases, including postpartum care;

(D) hypertensive disorders in pregnancy, including eclampsia and the postpartum patient to promote early diagnosis and treatment to reduce morbidity and mortality;

(E) sepsis or systemic infection in the pregnant or postpartum patient;

(F) venous thromboembolism in the pregnant and postpartum patient, including assessment of risk factors, prevention, early diagnosis and treatment;

(G) shoulder dystocia, including assessment of risk factors, counseling of patient, and multidisciplinary management; and

(H) behavioral health disorders, including depression, substance abuse and addiction that includes screening, education, consultation with appropriate personnel and referral.

(24) The facility must have nursing leadership and staff with training and experience in the provision of maternal nursing care who must coordinate with respective neonatal services.

(25) The facility must have a program for genetic diagnosis and counseling for genetic disorders, or a policy and process for consultation referral to an appropriate facility.

(26) Perinatal Education. A registered nurse with experience in maternal care, including moderately complex and ill obstetric patients, must provide the supervision and coordination of staff education. Perinatal education for high risk events must be provided at frequent intervals to prepare medical, nursing, and ancillary staff for these emergencies.

(27) Support personnel with knowledge and skills in breastfeeding to meet the needs of maternal patients must be available at all times.

(28) A certified lactation consultant must be available at all times.

(29) Social services, pastoral care and bereavement services must be provided as appropriate to meet the needs of the patient population served.

(30) Dietician or nutritionist available with training and experience in maternal nutrition and can plan diets that meet the needs of the pregnant and postpartum patient must comply with the requirements in §133.41 of this title.

§133.209. Maternal Designation Level IV.

(a) A Level IV (Comprehensive Care). The Level IV maternal designated facility must:

(1) provide comprehensive care for pregnant and postpartum patients with low risk conditions to the most complex medical, surgical or obstetrical conditions and their fetuses, that present a high risk of maternal morbidity or mortality;

(2) ensure access to on-site consultation to a comprehensive range of medical and maternal subspecialists, surgical specialists and behavioral health specialists;

(3) ensure capability to perform major surgery on-site;

(4) have physicians with critical care training available at all times to actively collaborate with Maternal Fetal Medicine physicians or Obstetrics and Gynecology physicians with obstetrics training, experience and privileges in maternal care;

(5) have a maternal fetal medicine critical care team with expertise and privileges to manage or co-manage highly complex, critically ill or unstable maternal patients;

(6) have a placenta accreta spectrum disorder multidisciplinary care team with expertise to complete risk factor screening, evaluation, diagnosis, consultation, and management of patients with anticipated or unanticipated placenta accreta spectrum disorder, including postpartum care;

(7) have skilled personnel with documented training, competencies, and annual continuing education, specific for the patient population served;

(8) facilitate transports; and

(9) provide outreach education related to trends identified through the QAPI Plan, specific requests, and system needs to lower level designated facilities, and as appropriate and applicable, to non-designated facilities, birthing centers, independent midwife practices, and prehospital providers.

(b) Maternal Medical Director (MMD). The MMD must be a physician who:

(1) is a board-certified obstetrics and gynecology physician with expertise in the area of critical care obstetrics; or a board-certified maternal fetal medicine physician, both with privileges in maternal care;

(2) demonstrates administrative skills and oversight of the QAPI Plan; and

(3) has completed annual continuing education specific to maternal care, including complicated conditions.

(c) If the facility has its own transport program, there must be an identified Transport Medical Director (TMD). The TMD must be a physician who is a board-certified maternal fetal medicine physician or board-certified obstetrics and gynecology physician with obstetrics privileges, with expertise and experience in critically ill maternal transport.

(d) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service.

(A) Pregnant patients who are identified at high risk of delivering a neonate that requires a higher level of neonatal care must be transferred to a higher level neonatal designated facility prior to delivery unless the transfer is unsafe.

(B) Pregnant or postpartum patients identified with conditions or complications that require a service not available at the facility, must be transferred to an appropriate maternal designated facility unless the transfer is unsafe.

(2) Supportive and emergency care must be delivered by appropriately trained personnel, for unanticipated maternal-fetal problems that occur during labor and delivery, through the disposition of the patient.

(3) A board-certified or board-eligible obstetrics and gynecology physician with maternal privileges must be on-site at all times and available for urgent situations.

(4) Ensure that a qualified physician, or a certified nurse midwife with appropriate physician back-up, is available to attend all deliveries or other obstetrical emergencies.

(5) Intensive Care Services. The facility must have an adult Intensive Care Unit (ICU) and critical care capabilities for maternal patients, including:

(A) a comprehensive range of medical and surgical critical care specialists and advanced subspecialists on the medical staff;

(B) a maternal fetal medicine critical care team with experience and expertise in the care of complex or critically ill maternal patients available to co-manage maternal patients; and

(C) availability of obstetric nursing and support personnel with experience in care for critically ill maternal patients.

(6) Maternal Fetal Medicine Critical Care Team. The facility must have a Maternal Fetal Medicine (MFM) critical care team whose members have expertise to assume responsibility for pregnant or postpartum patients who are in critical condition or have complex medical conditions, including;

(A) co-management of ICU-admitted obstetric patients;

(B) a MFM team member with full obstetrical privileges available at all times for on-site consultation and management, and to arrive at the patient bedside within 30 minutes of an urgent request; and

(C) a board-certified MFM physician with expertise in critical care obstetrics to lead the team.

(7) Management of critically ill pregnant or postpartum patients, including fetal monitoring in the ICU, respiratory failure and ventilator support, procedure for emergency cesarean, coordination of nursing care, and consultative or co-management roles to facilitate collaboration.

(8) The facility must have a Placenta Accreta Spectrum Disorder Team whose members have expertise in the diagnosis and management of pregnant or postpartum patients with anticipated and unanticipated placenta accreta spectrum disorder, including:

(A) a multidisciplinary primary response team must be comprised of a minimum of the following:

(i) an anesthesiologist with training and expertise in obstetrical anesthesiology;

(ii) obstetrics and gynecology physician or maternal fetal medicine physician;

(iii) surgeon or surgeons with expertise in pelvic, urologic, or gastroenterological surgery;

(iv) neonatologist;

(v) experienced nursing staff; and

(vi) experienced operating room personnel;

(B) a secondary response team must be comprised of a minimum of the following:

(i) a radiologist with interventional radiology skills; and

(ii) a blood bank or transfusion medicine specialist;

(C) all primary and secondary response team members must have full hospital privileges; and

(i) a representative of each component of the primary response team must be available at all times for inpatient consultation and management, and arrive at the bedside within 30 minutes of an urgent request to attend to a patient with placenta accreta spectrum disorder;

(ii) a representative of each component of the secondary response team must be available at all times for consultation and management, and be available to arrive at the patient bedside within a time frame commensurate with the clinical situation and consistent with current standards;

(D) representatives of each component of the primary and secondary response teams must participate in regular, ongoing staff and team-based education and training to care for patients with placenta accreta spectrum disorder;

(E) a board-certified maternal fetal medicine physician or a board-certified obstetrics and gynecology physician, who has expertise in the diagnosis and management of placenta accreta spectrum disorder, must lead the team;

(F) evidence that the facility participates in regular, ongoing outreach and education specific to placenta accreta spectrum disorder to other maternal facilities not specializing in placenta accreta spectrum disorder, inclusive of QAPI Plan;

(G) a documented on-call schedule of primary and secondary response team members is readily available to the facility and maternal staff on the labor and delivery unit and operating suite; and

(H) evidence that representatives of the primary and secondary response teams participate in the maternal program's QAPI process for the review of all placenta accreta spectrum disorder cases and assist the PCR with the review of placenta accreta spectrum disorder cases, as requested.

(9) Behavioral Health Services.

(A) Consultation by a behavioral health professional, with experience in maternal or neonatal counseling must be available on-site at all times for in-person visits when requested for prenatal, peri-operative, and postnatal needs of the patient within a time period consistent with current standards of professional practice and maternal care.

(B) Consultation by a psychiatrist, with experience in maternal or neonatal counseling must be available for in-person visits when requested within a time period consistent with current standards of professional practice and maternal care.

(10) The primary provider caring for a pregnant or postpartum patient who is a family medicine physician with obstetrics training and experience, obstetrics and gynecology physician, maternal fetal medicine physician, or a certified nurse midwife, physician assistant or nurse practitioner with appropriate physician back-up, whose credentials have been reviewed by the MMD and is on call:

(A) must arrive at the patient bedside within 30 minutes for an urgent request; and

(B) must complete annual continuing education, specific to the care of pregnant and postpartum patients, including complicated and critical conditions.

(11) Certified nurse midwives, physician assistants and nurse practitioners who provide care for maternal patients:

(A) must operate under guidelines reviewed and approved by the MMD; and

(B) must have a formal arrangement with a physician with obstetrics training or experience, and with maternal privileges who must:

(i) provide back-up and consultation;

(ii) arrive at the patient bedside within 30 minutes of an urgent request; and

(iii) meet requirements for medical staff as described in §133.205 of this title (relating to Program Requirements) respectively.

(12) An on-call schedule of providers, back-up providers, and provision for patients without a physician must be readily available to facility and maternal staff and posted on the labor and delivery unit.

(13) Ensure that the physician providing back-up coverage must arrive at the patient bedside within 30 minutes for an urgent request.

(14) Anesthesia Services must comply with the requirements found at §133.41 of this title (relating to Hospital Functions and Services) and must have:

(A) anesthesia personnel with experience and expertise in obstetric anesthesia must be available on-site at all times;

(B) a board-certified anesthesiologist with training or experience in obstetric anesthesia in charge of obstetric anesthesia services;

(C) a board-certified or board-eligible anesthesiologist with training or experience in obstetric anesthesia, including critically ill obstetric patients available for consultation at all times, and arrive at the patient bedside within 30 minutes for urgent requests; and

(D) anesthesia personnel on call, including back-up contact information, posted and readily available to the facility and maternal staff and posted in the labor and delivery area.

(15) Laboratory Services must comply with the requirements found at §133.41 of this title and must have:

(A) laboratory personnel on-site at all times;

(B) a blood bank capable of:

(i) providing ABO-Rh specific or O-Rh negative blood, fresh frozen plasma, cryoprecipitate, and platelet components on-site at all times;

(ii) implementing a massive transfusion protocol;

(iii) ensuring guidelines for emergency release of blood components; and

(iv) managing multiple blood component therapy; and

(C) perinatal pathology services available.

(16) Medical Imaging Services must comply with the requirements found at §133.41 of this title and must have:

(A) personnel appropriately trained in the use of x-ray equipment available on-site at all times;

(B) advanced imaging, including computed tomography (CT), magnetic resonance imaging (MRI), and echocardiography available at all times;

(C) interpretation of CT, MRI and echocardiography within a time period consistent with current standards of professional practice and maternal care;

(D) a radiologist with critical interventional radiology skills available at all times;

(E) advanced ultrasonographic imaging for maternal or fetal assessment, including interpretation available at all times; and

(F) a portable ultrasound machine available in the labor and delivery and antepartum unit.

(17) Pharmacy services must comply with the requirements found in §133.41 of this title and must have a pharmacist with experience in perinatal pharmacology available at all times.

(18) Respiratory Therapy Services must comply with the requirements found at §133.41 of this title and must have a respiratory therapist immediately available on-site at all times.

(19) Obstetrical Services.

(A) The ability to begin an emergency cesarean delivery within a time period consistent with current standards of professional practice and maternal care.

(B) Ensure the availability and interpretation of nonstress testing, and electronic fetal monitoring.

(C) A trial of labor for patients with prior cesarean delivery must have the capability of anesthesia, cesarean delivery, and maternal resuscitation on-site during the trial of labor.

(20) Resuscitation. The facility must have written policies and procedures specific to the facility for the stabilization and resuscitation of the pregnant or postpartum patient based on current standards of professional practice. The facility:

(A) ensures staff members, not responsible for the neonatal resuscitation, are immediately available on-site at all times who demonstrate current status of successful completion of ACLS, or a department-approved equivalent course, and the skills to perform a complete resuscitation; and

(B) ensures that resuscitation equipment, including difficult airway management equipment for pregnant and postpartum patients, is readily available in the labor and delivery, antepartum and postpartum areas.

(21) The facility must have a written hospital preparedness and management plan for patients with placenta accreta spectrum disorder who are undiagnosed until delivery, including educating and training hospital and medical staff who may be involved in the treatment and management of placenta accreta spectrum disorder about risk factors, diagnosis, and management.

(22) The facility must have written guidelines or protocols for various conditions that place the pregnant or postpartum patient at risk for morbidity or mortality, including promoting prevention, early identification, early diagnosis, therapy, stabilization, and transfer. The guidelines or protocols must address a minimum of:

(A) massive hemorrhage and transfusion of the pregnant or postpartum patient in coordination of the blood bank, including management of unanticipated hemorrhage or coagulopathy;

(B) obstetrical hemorrhage, including promoting the identification of patients at risk, early diagnosis, and therapy to reduce morbidity and mortality;

(C) placenta accreta spectrum disorder, including team education, risk factor screening, evaluation, diagnosis, fostering telemedicine medical services and referral as appropriate, treatment, and multidisciplinary management of both anticipated and unanticipated placenta accreta spectrum disorder cases, including postpartum care;

(D) hypertensive disorders in pregnancy, including eclampsia and the postpartum patient to promote early diagnosis and treatment to reduce morbidity and mortality;

(E) sepsis or systemic infection in the pregnant or postpartum patient;

(F) venous thromboembolism in the pregnant and postpartum patient, including assessment of risk factors, prevention, early diagnosis and treatment;

(G) shoulder dystocia, including assessment of risk factors, counseling of patient, and multidisciplinary management; and

(H) behavioral health disorders, including depression, substance abuse and addiction that includes screening, education, consultation with appropriate personnel and referral.

(23) The facility must have nursing leadership and staff with training and experience in the provision of maternal critical care who must coordinate with respective neonatal services.

(24) The facility must have a program for genetic diagnosis and counseling for genetic disorders, or a policy and process for consultation referral to an appropriate facility.

(25) Perinatal Education. A registered nurse with experience in maternal care, including moderately complex and ill obstetric patients, must provide the supervision and coordination of staff education. Perinatal education for high risk events must be provided at frequent intervals to prepare medical, nursing, and ancillary staff for these emergencies.

(26) Support personnel with knowledge and skills in breastfeeding to meet the needs of maternal patients must be available at all times.

(27) A certified lactation consultant must be available at all times.

(28) Social services, pastoral care and bereavement services must be provided as appropriate to meet the needs of the patient population served.

(29) Dietician or nutritionist available with training and experience in maternal nutrition and can plan diets that meet the needs of the pregnant and postpartum patient and critically ill maternal patient must comply with the requirements in §133.41 of this title.

§133.210. Survey Team.

(a) The survey team composition must be as follows:

(1) Level I facilities maternal program staff must conduct a self-survey, documenting the findings on the approved department survey form. The department may periodically require validation of the survey findings, by an on-site review conducted by department staff.

(2) Level II facilities must be surveyed by a multidisciplinary team that includes at a minimum one obstetrics and gynecology physician and one maternal nurse who:

(A) have completed a survey training course;

(B) have observed a minimum of one maternal survey;

(C) are currently active in the management of maternal patients and active in the maternal QAPI Plan and process at a facility providing the same or higher level of maternal care; and

(D) meet the criteria outlined in the department survey guidelines.

(3) Level III facilities must be surveyed by a multidisciplinary team that includes at a minimum, one obstetrics and gynecology physician or maternal fetal medicine physician and one maternal nurse, who:

(A) have completed a survey training course;

(B) have observed a minimum of one maternal survey;

(C) are currently active in the management of maternal patients and active in the maternal QAPI Plan and process at a facility providing the same or higher level of maternal care; and

(D) meet the criteria outlined in the department survey guidelines.

(4) Level III facilities that serve as referral centers for placenta accreta spectrum disorder, must have a survey team that includes a maternal fetal medicine physician and a maternal nurse from a Level IV facility.

(5) Level IV facilities must be surveyed by a multidisciplinary team that includes at a minimum, one obstetrics and gynecology physician, a maternal fetal medicine physician, and one maternal nurse, who:

(A) have completed a survey training course;

(B) have observed a minimum of one maternal survey;

(C) are currently active in the management of maternal patients and active in the maternal QAPI plan and process at a facility providing Level IV maternal care; and

(D) meet the criteria outlined in the department survey guidelines.

(b) All members of the survey team, except department staff, must come from a Perinatal Care Region outside the facility's region or a contiguous region.

(c) Survey team members cannot have a conflict of interest:

(1) A conflict of interest exists when a surveyor has a direct or indirect financial, personal, or other interest which would limit or could reasonably be perceived as limiting the surveyor's ability to serve in the best interest of the public. The conflict of interest may include a surveyor personally trained a key member of the facility's leadership in residency or fellowship, collaborated with a key member of the facility's leadership professionally, participated in a designation consultation with the facility, had a previous working relationship with the facility or facility leaders, or conducted a designation survey for the facility within the past four years. Surveyors cannot be from the same PCR or TSA region or a contiguous region of the facility's location.

(2) If a designation survey occurs with a surveyor who has an identified conflict of interest, the maternal designation site survey summary and medical record reviews may not be accepted by the department.

(d) The survey team must follow the department survey guidelines to evaluate and validate that the facility demonstrates the designation requirements are met.

(e) All information and materials submitted by a facility to the department and a survey organization under Texas Health and Safety Code, §241.183(d) or this subchapter, are subject to confidentiality as articulated in Texas Health and Safety Code, §241.184, Confidentiality; Privilege, and are not subject to disclosure under Texas Government Code, Chapter 552, or discovery, subpoena, or other means of legal compulsion for release to any person.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia Hernandez
General Counsel
Department of State Health Services
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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 December 30, 2022, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts 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.

The amendments to §§113.100, 113.840, 113.1090, and 113.1180 are adopted *with changes* to the proposed text as published in the July 15, 2022, issue of the *Texas Register* (47 TexReg 4072) and, therefore, will be republished. The amendments to §§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, 113.860, 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, 113.1100, 113.1110, 113.1120, 113.1130, 113.1140, 113.1150, 113.1160, 113.1170, 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 are adopted *without changes* and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The rulemaking adoption will revise Chapter 113 to incorporate by reference changes that the United States Environmental Protection Agency (EPA) has made to a number of existing National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, under 40 Code of Federal Regulations (CFR) Part 63 as published through August 10, 2022.

The Federal Clean Air Act (FCAA) Amendments of 1990, §112, require 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 rulemaking adoption will 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," 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 adopted 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 will 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(l). Upon delegation, the commission will be responsible for administering and enforcing the MACT or GACT requirements.

The commission adopts 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 FR citations and publication dates 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 adopted additional changes to certain standards, which were published too recently to be specifically addressed in the proposal documents for this rulemaking. In the proposal preamble, the commission provided notice that in addition to the changes specifically described in the Section by Section Discussion portion of the proposal 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 were proposed. Accordingly, in this adoption, the commission has included certain 2022 amendments to 40 CFR Part 63, Subparts A, ZZZZ, and IIIII, which were published by the EPA after March 9, 2022. These recent amendments were generally corrections, clarifications, or updates to compliance dates, work practices, and monitoring and emission standards. It is administratively more efficient to include these amendments and ensure that Chapter 113, Subchapter C, is as up-to-date as possible, than to address these amendments separately in a later rulemaking. These amendments are discussed further in the appropriate Section by Section Discussion of this preamble.

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 adopts amendments to §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); November 19, 2021 (86 FR 66038), (86 FR 66045), and (86 FR 66096); and May 23, 2022 (87 FR 31185). The May 23, 2022, update was added after proposal, as discussed elsewhere in this preamble.

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 to 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 will 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.)

The May 23, 2022, amendments made technical corrections to the General Provisions of the NESHAP (40 CFR Part 63, Subpart A). Specifically, on November 19, 2021, EPA finalized changes to the NESHAPs in two actions. The first rule (86 FR 66045) finalized the Refractory Products Manufacturing (40 CFR Part 63, Subpart SSSSS) RTR. The second rule (86 FR 66096) finalized changes to the Generic MACT standards (40 CFR Part 63, Subpart YY) concerning the Carbon Black Production (major sources) and Cyanide Chemicals Manufacturing RTRs, and the Carbon Black Production Area Sources Technology Review. Both actions incorporated by reference three different test methods. Because the methods were incorporated by reference for the first time and the final rules published on the same date, there was an error in alphanumerically ordering the test methods in 40 CFR §63.14. The ordering and instructions of the standards in the centralized IBR section were incorrect. Thus, the redesignations and additions of the standards were unable to be published in the CFR.

§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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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, recordkeeping, 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to 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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 February 14, 2022, amendment also corrects a typographical error published in the proposal by replacing the date from "February 14, 2020" to "February 14, 2022." 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 implementation 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §113.960 by incorporating by reference all amendments to 40 CFR Part 63, Sub-

part 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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) December 4, 2020 (85 FR 78412), and August 10, 2022 (87 FR 48603). The August 10, 2022, update was added after proposal, as discussed elsewhere in this preamble. 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) specifica-

tions. 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 August 10, 2022, amendments reflect a 2015 court decision in *Delaware Department of Natural Resources and Environmental Control v. EPA,* 785 F.3d 1 (D.C. Cir. 2015) as amended (July 21, 2015), vacating provisions in the regulations specifying that emergency engines could operate for emergency demand response or during periods where there is a deviation of voltage or frequency. This ministerial rule removes 40 CFR §63.6640(f)(2)(ii) and (iii) and revises other provisions that contain references to the vacated subparagraphs or referenced operation of engines categorized as emergency engines for the purpose of emergency demand response.

The commission also adopts amendments to 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 adopts amendments to §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 BBBBB)

The commission adopts amendments to §113.1110 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BBBBB, since this section was last amended. During this period, the EPA amended Subpart BBBBB 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 CCCCC)

The commission adopts amendments to §113.1120 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCCCC, since this section was last amended. During this period, the EPA amended Subpart CCCCC 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 DDDDD)

The commission adopts amendments to §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 adopts 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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), December 28, 2020 (85 FR 84261), and May 6, 2022 (87 FR 27002). The May 6, 2022, update was added after proposal, as discussed elsewhere in this preamble. 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. The May 6, 2022, amendments finalized the RTR and the beyond-the-floor MACT determination in response to a petition for reconsideration. These amendments prohibited mercury emissions from existing mercury cell chlor-alkali plants within three years. The amendments also finalized work practice standards and instrumental monitoring to minimize fugitive emissions. Also, the EPA finalized revisions related to emissions during periods of SSM and amendments to correct a few minor errors in the compliance provisions of the 2003 rule.

The commission also adopts amendments to the title and rule reference in §113.1180 to "Mercury Cell Chlor-Alkali Plants (40 Code of Federal Regulations Part 63, Subpart IIIII)" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart IIIII.

§113.1190, ABrick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ)

The commission adopts amendments to §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 JJJJ 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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 notifi-

cation 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 performance 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 adopts amendments to §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 adopts amendments to §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 WWWWW)

The commission adopts amendments to §113.1320 by incorporating by reference all amendments to 40 CFR Part 63, Subpart WWWWW, since this section was last amended. During this period, the EPA amended Subpart WWWWW on November 19, 2020 (85 FR 73854). The November 19, 2020, amendments revised Table 1 of 40 CFR Part 63, Subpart WWWWW, 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 adopts 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 ZZZZZ)

The commission adopts amendments to §113.1350 by incorporating by reference all amendments to 40 CFR Part 63, Subpart ZZZZZ, since this section was last amended. During this period, the EPA amended Subpart ZZZZZ 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 BBBBBB)

The commission adopts amendments to §113.1370 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 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts 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 adopts amendments to 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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 adopts amendments to 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 adopts amendments to §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 AAAAAAA)

The commission adopts amendments to §113.1520 by incorporating by reference all amendments to 40 CFR Part 63, Subpart AAAAAAA, since this section was last amended. During this period, the EPA amended Subpart AAAAAAA 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 BBBBBBB)

The commission adopts amendments to §113.1525 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BBBBBBB, since this section was last amended. During this period, the EPA amended Subpart BBBBBBB 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 CCCCCCC)

The commission adopts amendments to §113.1530 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCCCCCC, since this section was last amended. During this period, the EPA amended Subpart CCCCCCC 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 adopts amendments to §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 adopts amendments to 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.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory impact analysis requirements of Tex. Gov't Code Ann., §2001.0225 and determined that the rulemaking adoption 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 rulemaking adoption 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 program; 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 adopted 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 rulemaking adoption 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 August 10, 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 proposed rulemaking, the adopted 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 will 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 will 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 adopted 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 adopted 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 adopted rules do not modify the federal NESHAP, but are incorporations by reference, which do not change the federal requirements.

For these reasons, the adopted 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 adopted 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 rulemaking adoption 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 incorporation by reference without modification or substitution, and will not exceed any standard set by state or federal law. These adopted rules are not the result of an express requirement of state law. The adopted 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 adopted 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 rulemaking adoption action is not subject to the regulatory analysis provisions of Tex. Gov't Code Ann., §2001.0225(b).

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption 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 rulemaking adoption action as required by Tex. Gov't Code Ann., §2007.043. The primary purpose of this rulemaking adoption action, as discussed elsewhere in this preamble, is to make amendments to a number of existing NESHAP incorporated into Chapter 113 to update them with changes made by EPA through August 10, 2022. The NESHAP 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 NESHAP are technology-based standards commonly referred to as MACT or GACT standards which the EPA develops to regulate emissions of HAP as required under the FCAA. Certain sources of HAP 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 adopted rules do not create any additional burden on private real property. Under federal law, the affected industries will be required to comply with the NESHAP regardless of whether the commission or the EPA is the agency responsible for implementation of the NESHAP.

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 rulemaking adoption 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 adopted 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 adopted 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 rulemaking adoption will 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 adopted 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 adopted rules will not affect private real property in a manner that will require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the rulemaking adoption will 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 rulemaking adoption.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the rulemaking adoption is consistent with the applicable CMP goals and policies. The CMP goal applicable to the adopted 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 adopted 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 adopted rules will incorporate federal regulations concerning emissions of HAPs from certain industries into Chapter 113, allowing the commission to enforce those standards. This will tend to benefit the environment because it will 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 will not violate or exceed any standards identified in the applicable CMP goal and policy because the adopted rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments regarding the CMP were received.

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. 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.

Public Comment

The commission offered a hybrid in-person and virtual public hearing on August 11, 2022. The comment period closed on August 15, 2022. The commission received one written comment from an individual. No specific changes to the rules were suggested.

Response to Comments

Comment

An individual commented on the need to lower El Paso's ozone level despite what is going on in Ciudad Juarez.

Response

The Ch. 113 rules being adopted implement federal CAA §112 standards that control specific HAP to reduce the health risks of those pollutants to the public. The adoption of these rules will allow Texas to continue enforcing these standards in Texas, and this includes controlling sources of HAP emissions in the El Paso area, as well as statewide. These regulations are designed to control emissions of specific toxic pollutants, but are not designed for the control of ground-level ozone. Texas has other rules and programs to address ground-level ozone, including State Implementation Plans which regulate ozone-forming emissions of volatile organic compounds and nitrogen oxide, as well as Nonattainment New Source Review and Prevention of Significant Deterioration permitting programs which place limitations on major sources of ozone-forming emissions. No changes were made to the rulemaking in response to this comment.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers; §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 adopted 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 adopted amendments implement TWC, §§5.102, 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 May 23, 2022 (87 FR 31185), 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.

§113.840. 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, 2022 (87 FR 8197).

§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 August 10, 2022 (87 FR 48603).

§113.1180. Mercury Cell Chlor-Alkali Plants (40 Code of Federal Regulations Part 63, Subpart IIIII).

The Mercury Cell Chlor-Alkali Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart IIIII, is incorporated by reference as amended through May 6, 2022 (87 FR 27002).

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 December 16, 2022.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call:

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4009

The Comptroller of Public Accounts adopts amendments to §9.4009, concerning appraisal of recreational, park, and scenic land, without changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg

6406). The rule will not be republished. These amendments are to reflect updates and revisions to the guidelines for the appraisal of recreational, park, and scenic land. The updated manual may be viewed at https://comptroller.texas.gov/taxes/property-tax/docs/96-1769.pdf.

The amendments update and revise the April 2016 guidelines for the appraisal of recreational, park, and scenic land. The manual sets forth the methods to apply and the procedures to use in appraising land used for recreational, park, or scenic land under Tax Code, Chapter 23, Subchapter F.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated throughout to reflect changes in the rollback period and the elimination of the annual interest rate component from the calculation of the rollback tax in response to House Bill 3833, 87th Legislature, R.S. (2021). In addition, the updated manual adds interest to the rollback tax if it becomes delinquent. The manual is also updated throughout to reflect changes to the application process and added deadlines to implement Senate Bill 63, 87th Legislature, R.S. (2021).

The comptroller did not receive any comments regarding adoption of the amendments.

These amendments are adopted under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.83 (Appraisal of Restricted Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and promulgate rules specifying the methods to apply and the procedures to use in appraising recreational, park, and scenic land for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapter F.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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34 TAC §9.4010

The Comptroller of Public Accounts adopts amendments to §9.4010, concerning appraisal of public access airport property, without changes to the proposed text as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6407). The rule will not be republished. These amendments are to reflect updates and revisions to the guidelines for the appraisal of public access airport property. The updated manual may be viewed at https://comptroller.texas.gov/taxes/property-tax/docs/96-1772.pdf.

The amendments update and revise the May 2016 guidelines for the appraisal of public access airport property. The manual sets forth the methods to apply and the procedures to use in appraising property that qualifies for special appraisal as public access airport property under Tax Code, Chapter 23, Subchapter G.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated throughout to reflect changes in the rollback period and the elimination of the annual interest rate component from the calculation of the rollback tax in response to House Bill 3833, 87th Legislature, R.S. (2021). In addition, the updated manual adds interest to the rollback tax if it becomes delinquent. The manual is also updated throughout to reflect changes to the application process and added deadlines to implement Senate Bill 63, 87th Legislature, R.S. (2021).

The comptroller did not receive any comments regarding adoption of the amendments.

These amendments are adopted under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.93 (Appraisal of Restricted Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and promulgate rules specifying the methods to apply and the procedures to use in appraising public access airport property for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapter G.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §36.5

The Texas Department of Public Safety (the department) adopts new §36.5, concerning Sellers of Catalytic Converters in the Ordinary Course of Business. This rule is adopted with changes to the proposed text as published in the November 11, 2022 issue of the *Texas Register* (47 TexReg 7529) and will be republished.

House Bill 4110, 87th Legislative Session, amended the Metals Recycling Entities Act (Occupations Code, Chapter 1956) requiring that a person attempting to sell a catalytic converter to a metal

recycling entity provide identifying information on the source vehicle, as well as proof of ownership of the vehicle. However, the statute exempts the purchase of regulated material (including catalytic converters) from businesses that sell regulated materials "in the ordinary course of business" (Occupations Code, §1956.002). Several types of businesses, such as salvage vehicle dealers or repair facilities, acquire and sell used catalytic converters as a standard part of their business and would appear to be operating within the scope of the statutory exemption. The proposed rule provides guidance to as to the department's interpretation of the exemption by outlining several categories of businesses generally recognized as engaging in the sale of catalytic converters in the ordinary course of their business.

Written comments were submitted by Amy Bresnen and Steve Bresnen, on behalf of PGM of Texas; Karen Phillips, General Counsel and Executive Vice President of Texas Automobile Dealers Association; Mr. Mel Wright, President of the Recycling Council of Texas; and Taylor Sims, on behalf of the Recycling Council of Texas.

COMMENT: Amy Bresnen and Steven Bresnen submitted comments in support of the proposed rule. Specifically, they note that the proposed rule "… will give legitimate Texas businesses in the stream of commerce that results in recycling catalytic converters much needed guidance and provide for uniformity of administration of the metal recycling regulatory regime."

RESPONSE: None.

COMMENT: Ms. Phillips is concerned that the proposed rule is overly limited in its application. Specifically, she points out that proposed subsection (b)'s limitation that the acquisition of a catalytic converter must be "through the removal and replacement of catalytic converters on a vehicle" excludes at least two scenarios: (1), there is no "removal" because the original catalytic converter was stolen or otherwise previously removed from the vehicle on which a new catalytic converter is installed; and (2), in its capacity as a parts supplier, the dealership sells a new catalytic converter to a repair shop. In either of these scenarios the rule's exemption would not apply. Ms. Phillips recommends the removal of subsection (b).

RESPONSE: The department agrees with the comment and the recommendation. It appears there are legitimate transactions that would be excluded from the rule's application as proposed. In the interest of avoiding this and any additional unintended consequences subsection (b) has been removed.

COMMENT: Mr. Wright requests that the rule "… explicitly make clear that the "Sellers of Catalytic Converters in the Ordinary Course of Business" should not be purchasing or otherwise acquiring detached catalytic converters unless they are registered and regulated as a MRE with DPS and compliant with DPS reporting regarding catalytic converters." To accomplish this, Mr. Wright proposes the following addition to the proposal:

(a) For purposes of §1956.002(1), Occupations Code, a manufacturing, industrial, commercial, retail, or other seller that sells catalytic converters in the ordinary course of the seller's business which acquires catalytic converters through the purchase and/or servicing of a whole vehicle or unit includes but is not limited to a person acting on behalf of a business that is a:

Mr. Wright indicates "this change will help clarify the means of possession of the catalytic converter to those who are legally allowed to purchase and those who are legally allowed to sell catalytic converters."

RESPONSE: Limiting the scope of the rule to transactions involving the "purchase or servicing of a whole vehicle" would exclude the transfer of catalytic converters from a parts supplier to a repair shop. In light of Ms. Phillips' comments and the department's intent to clarify that the scope of the rule should not be so limited, the department respectfully disagrees with Mr. Wright's proposal and declines to make this change.

COMMENT: Ms. Sims requests that the exception for "automotive wrecking yard or salvage yard as defined by §234.001(1), Local Government Code" be removed from the proposal. The concern is that "this reference to automotive wrecking and salvage yards is not a reference to any legitimate and licensed entity."

RESPONSE: The department agrees that proposed subsection (a)(2) does not describe any entities other than those also described in proposed subsection (a)(5) as used automotive parts recyclers licensed under Chapter 2309, Occupations Code and has removed the referenced language from the proposal.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

§36.5. Sellers of Catalytic Converters in the Ordinary Course of Business.

(a) For purposes of §1956.002(1), Occupations Code, a manufacturing, industrial, commercial, retail, or other seller that sells catalytic converters in the ordinary course of the seller's business includes but is not limited to a person acting on behalf of a business that is a:

(1) metal recycling entity registered under Chapter 1956, Occupations Code;

(2) motor vehicle dealer or converter that holds a license under Chapter 2301, Occupations Code, including the service department of the dealer or converter;

(3) salvage vehicle dealer licensed, or a business classified as a salvage pool operator, under Chapter 2302, Occupations Code;

(4) used automotive parts recycler licensed under Chapter 2309, Occupations Code;

(5) person who operates a shop or garage that is engaged in the business of repairing motor vehicles to whom Chapter 2305, Occupations Code, applies; or

(6) holder of a dealer general distinguishing number under Chapter 503, Transportation Code, including the service department of the holder;

(7) a person permitted, registered or licensed by another state, or a political subdivision of another state, to engage in one or more business activities for which a person listed in paragraphs (1) through (6) of this subsection would be required to be permitted, registered or licensed by this state or a political subdivision of this state; or

(8) a person who imports catalytic converters or participates in handling or transporting in connection with such importing, pursuant to the laws of the United States.

(b) Notwithstanding subsection (a) of this section, the purchase of a catalytic converter, including any material removed from a catalytic converter, is governed by the provisions of Chapter 1956, Occupations Code and this chapter. Accordingly, only a registered

metal recycling entity may purchase a catalytic converter, including any material removed from a catalytic converter.

(c) This section does not affect the application of:

(1) a statute referred to in subsections (a)(2) through (a)(6) of this section; or

(2) any requirement of law other than Chapter 1956, Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2022.

TRD-202205068
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 5, 2023
Proposal publication date: November 11, 2022
For further information, please call: (512) 424-5848

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) adopts amendments to 40 TAC §452.2, concerning Advisory Committees, without changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5081). The rule will not be republished. Due to an error by the Texas Register, the text of the proposed amendments was published incorrectly. A Correction of Error is published contemporaneously in this issue.

The amended rule is adopted to change eligibility requirements for the Veterans County Service Officer Advisory Committee Membership. The change will ensure that current Veterans County Service Officers provide their ongoing challenges and best practices to the Committee for consideration and action.

No comments were received regarding the proposed rule amendments.

The amended rule is adopted under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration, and Texas Government Code §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

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 December 12, 2022.

TRD-202204998
Cory Scanlon
General Counsel
Texas Veterans Commission
Effective date: January 1, 2023
Proposal publication date: August 26, 2022
For further information, please call: (737) 320-4167

♦ ♦ ♦


Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

Pursuant to the Texas Government Code, §2001.039, the Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 3, Boll Weevil Eradication Program, Subchapter A, (Election Procedures), Subchapter B (Establishment of Rules, Procedures, and Methods of Treatment), Subchapter C (Prohibition of Planting of Cotton), Subchapter D (Requirements for Participation in the Eradication Program and Administrative Penalty Enforcement), Subchapter E (Creation of Eradication Zones), Subchapter F (General Procedures), Subchapter H (Use of Bio-Intensive Controls in Active Boll Weevil Eradication Zones), and Subchapter J (Organic Cotton Rules).

The notice of intent to review was published in the September 30, 2022 issue of the *Texas Register* (47 TexReg 6471). No comments were received in response to that notice.

The Department finds that the reasons for initially adopting the rules in these subchapters continue to exist. The Department readopts §§3.20, 3.50, 3.53, 3.77, 3.101, 3.110-3.119, 3.404-3.405, 3.600, and 3.603 with no changes. The Department also readopts the remaining rules in Subchapters A-F, H and J with proposed rule amendments. The proposed rule amendments can be found in the Proposed Rules section of this issue.

TRD-202205121
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: December 19, 2022

♦ ♦ ♦

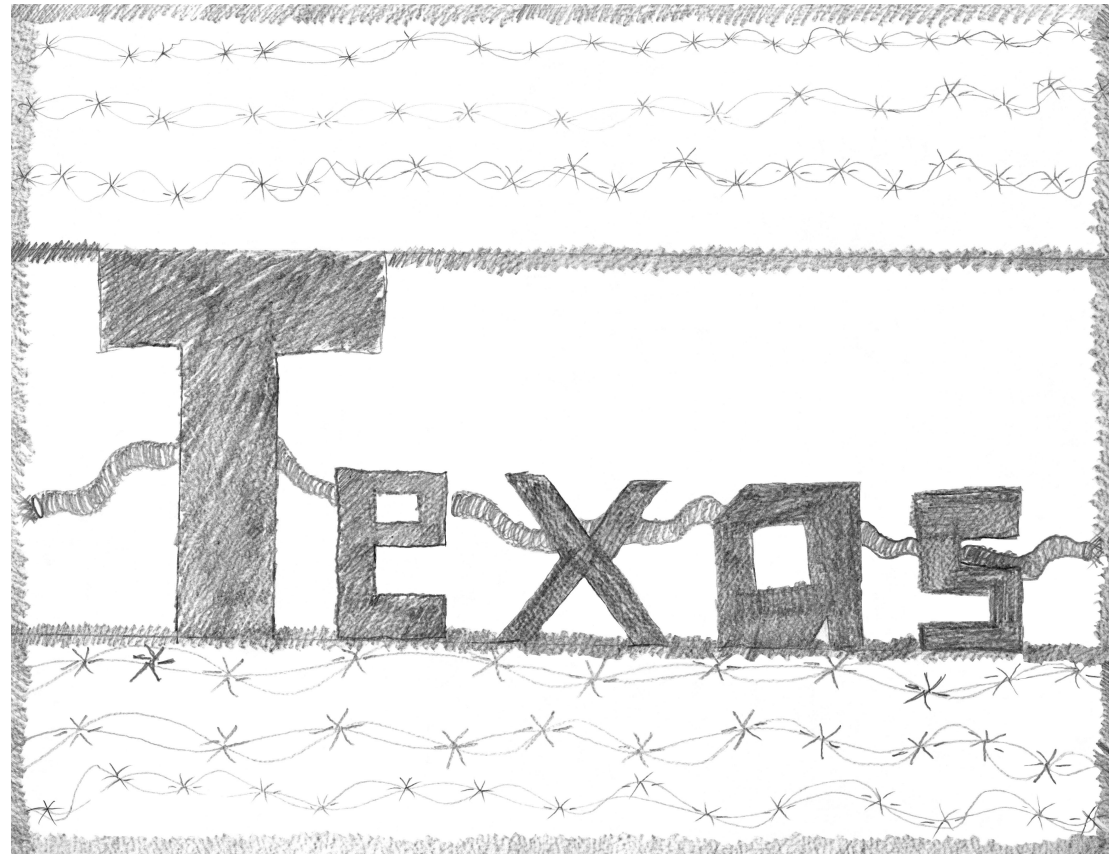
Pursuant to the Texas Government Code (Code), §2001.039, the Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 7 (Pesticides), Subchapter A (General), Subchapter B (Registration), Subchapter C (Licensing), Subchapter D (Use and Application), Subchapter E (Regulated Herbicides), Subchapter F (Enforcement), and Subchapter G (Penalties). Notice of the proposed rule review was published in the October 7, 2022 issue of the *Texas Register* (47 TexReg 6635). No comments were received in response to this notice.

Before publishing notice of this rule review, the Department issued an informal advance notice of the proposed rule review to several stakeholders, consisting of commodity, producer and grower, and pesticide-related associations and organizations. The Department did not receive a response to this notice.

The Department finds that the reasons for initially adopting the rules in these subchapters continue to exist. The Department readopts §§7.2, 7.11, 7.13, 7.27, 7.34 - 7.35, 7.38, 7.41, 7.61, and 7.62 with no changes. The Department readopts the remaining rules in this chapter with proposed amendments. The proposed rule amendments can be found in the Proposed Rules section of this issue of the *Texas Register.*

TRD-202205101
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: December 16, 2022

♦ ♦ ♦


TEXAS

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 Chapter 239 - Preamble

Timeline of Transitions for the School Librarian and Reading Specialist Certificates

Date	Proposed Action
May 2023	Standards go into effect
July 2023	Capacity building for stakeholders to discuss new standards and transition timeline
Fall 2025	Anticipated finalizing of exam framework Capacity building for stakeholders to discuss exam framework
Spring 2026	Capacity building for stakeholders to discuss new standards, exam framework, and transition timeline
September 2026	Date by which all programs should have transitioned to new certificate standards
August 2027	Last date by which candidates can take the old exam
September 2027	Anticipated date for new, redesigned exam launch
August 2028	Last date by which a candidate is able to use a passing score on the old exam for certification

Figure: 22 TAC §133.101

Issue	Citation	Suggested Action
Technical Review determines some/all experience is not acceptable	Chapter 133 Subchapter E; §133.43	Demonstration of additional experience required equal to the amount needed to meet minimum experience requirement. Experience must be verified by at least one professional engineer.
Technical Review determines unfavorable references	Chapter 133 Subchapter F; §133.53	Additional favorable professional engineer references received to replace the unfavorable plus an additional reference. References must be knowledgeable of work experience covered in previous unfavorable reference.
Technical Review of application documentation determines applicant may have fraudulently or deceitfully provided information related to licensure.	§1001.452; §133.81	Third-party ethics course of appropriate level related to infraction.
Waiver of Fundamentals of Engineering or Principles and Practice of Engineering Exam not recommended.	§133.69	Require passage of Fundamentals of Engineering and/or Principles and Practice of Engineering Exam.

Figure: 22 TAC §134.101

Issue	Citation	Suggested Action
Technical Review determines some/all experience is not acceptable	Chapter 134 Subchapter E; §134.43	Demonstration of additional experience required equal to the amount needed to meet minimum experience requirement. Experience must be verified by at least one registered professional land surveyor reference provider.
Technical Review determines unfavorable references	Chapter 134 Subchapter F; §134.53	Additional favorable registered professional land surveyor references received to replace the unfavorable plus an additional reference. References must be knowledgeable of work experience covered in previous unfavorable reference.
Technical Review of application documentation determines applicant may have fraudulently or deceitfully provided information related to licensure.	§1001.452; §134.81	Third-party ethics course of appropriate level related to infraction.
Waiver of Fundamentals of Surveying or Principles and Practice of Surveying Exam not recommended.	§134.69	Require passage of Fundamentals of Surveying and/or Principles and Practice of Surveying Exam.

Figure: 30 TAC §285.91(2)

SEPTIC TANK MINIMUM LIQUID CAPACITY

A. Determine the applicable wastewater usage rate (Q) in TABLE III of 30 TAC Chapter 285.

B. Calculate the minimum septic tank volume (V) as follows:

1. For Q equal to or less than 250 gal/day:
V = 750 gallons

2. For Q greater than or equal to 251 gal/day but less than or equal to 350 gal/day:
V = 1000 gallons

3. For Q greater than or equal to 351 gal/day but less than or equal to 500 gal/day:
V = 1250 gallons

4. For Q greater than or equal to 501 gal/day but less than or equal to 1000 gal/day:
V = 2.5 Q
5. For Q greater than or equal to 1001 gal/day:
V= 1,750 + 0.75Q

AEROBIC TREATMENT UNIT SIZING FOR SINGLE FAMILY RESIDENCES, COMBINED FLOWS FROM SINGLE FAMILY RESIDENCES, OR MULTI-UNIT RESIDENTIAL DEVELOPMENTS

Number of bedrooms/living area of home	Minimum Aerobic Tank Treatment Capacity (gallons per day per residential unit)
One and two bedrooms and < 1,501 sq. ft.	360
Three bedrooms and < 2,501 sq. ft. or Less than three bedrooms and 1,500 < sq. ft. < 2,501	360
Four bedrooms and < 3,501 sq. ft. or Less than four bedrooms and 2,500 < sq. ft. < 3,501	480
Five bedrooms and < 4,501 sq. ft. or Less than five bedrooms and 3,500 < sq. ft. < 4,501	600
Six bedrooms and < 5,501 sq. ft. or Less than six bedrooms and 4,500 < sq. ft. < 5,501	720

Seven bedrooms and < 7,001 sq. ft. or Less than seven bedrooms and 5,500 < sq. ft. < 7,001	840
Eight bedrooms and < 8,501 sq. ft. or Less than eight bedrooms and 7,000 < sq. ft. < 8501	960
Nine bedrooms and < 10,001 sq. ft. or Less than nine bedrooms and 8,500 < sq. ft. < 10,001	1,080
Ten bedrooms and < 11,501 sq. ft. or Less than ten bedrooms and 10,000 < sq. ft. < 11,501	1,200
For each additional bedroom above ten or 1,500 additional square feet of living area above 11,500	120

Figure: 30 TAC §285.91(10)

Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.						
	TO					
FROM	Tanks	Soil Absorption Systems, & Unlined ET Beds	Lined Evapotranspiration Beds	Sewer Pipe With Watertight Joints	Surface Application (Edge of Spray Area)	Drip Irrigation
Public Water Wells[2]	50	150	150	50	150	150
Public Water Supply Lines[2]	10	10	10	10	10	10
Wells and Underground Cisterns	50	100	50	20	100	100
Private Water Line	10	10	5	10[5] except at connection to structure	No separation distances	10
Wells Completed in accordance with 16 TAC §76.100(a)(1) [16 TAC	50	50	50	20	50	50

§76.1000(a)(1)]						
Streams, Ponds, Lakes, Rivers, Creeks (Measured From Normal Pool Elevation and Water Level); Salt Water Bodies (High Tide Only); Retention Ponds/Basin (Spillway elevation)	50	75 LPD with secondary treatment & disinfection - 50	50	20	50	25 when R_a [<]≦ 0.1 75 when R_a>0.1 (With Secondary Treatment & Disinfection - 50)
Foundations, Buildings, Surface Improvements, Property Lines, Swimming Pools, and Other Structures	5	5	5	5 Pipe may run beneath driveways and sidewalks or up to surface improvements if it is Schedule 80 pipe or sleeved in Schedule 40 pipe Pipe containing secondary effluent has no setbacks	No Separation Distances Except: Property lines - 20[6] Swimming Pools - 25	No Separation Distances Except[4]: Property Lines - 5

				from building foundations		
Underground Easements	1	1	1	1	May spray to edge of easement, but not into. Sprinkler heads must be 1 feet from easement edge	1
Overhead Easements	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder
Slopes Where Seeps may Occur and detention ponds	5	25	5	10	10	10 when R_a[<]= 0.1 25 when R_a>0.1
Edwards Aquifer Recharge Features (See	50	150	50	50	150	100 when R_a[<]= 0.1 150

Chapter 213 of this title relating to Edwards Aquifer)[3]						when R_a>0.1

1. All distances measured in feet, unless otherwise indicated
2. For additional information or revisions to these separation distances, see Chapter 290 of this title (relating to Public Drinking Water)
3. No on-site sewage facility may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.
4. Drip irrigation lines may not be placed under foundations.
5. Private water line/wastewater line crossings should be treated as public water line crossings, see Chapter 290 of this title.
6. Separation distance may be reduced to 10 feet when sprinkler operation is controlled by [commercial] a timer. See §285.33(d)(2)(G)(i) of this title (relating to Criteria for Effluent Disposal systems)

Figure: 31 TAC §15.2(41)[(40)]

A local government is not authorized to issue a permit or certificate authorizing construction or operation of the industrial facilities listed in this appendix within critical dune areas or seaward of a dune protection line, as provided in §15.4(c)(5) of this title (relating to Dune Protection Standards), with the exception of activities in Part 1, Division D, Major Group 20, Industry Group 209, Industry Numbers 2091 and 2092, as provided in the definition of "industrial facilities" in §15.2 of this title (relating to Definitions). This appendix is taken from the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.).

DIVISION D. MANUFACTURING	
Major Group 20.	Food and kindred products, except Industry Numbers 2091 and 2092
Major Group 21.	Tobacco products
Major Group 22.	Textile mill products
Major Group 23.	Apparel and other finished products made from fabrics and similar materials
Major Group 24.	Lumber and wood products, except furniture
Major Group 25.	Furniture and fixtures
Major Group 26.	Paper and allied products
Major Group 27.	Printing, publishing, and allied industries
Major Group 28.	Chemicals and allied products
Major Group 29.	Petroleum refining and related industries
Major Group 30.	Rubber and miscellaneous plastics products
Major Group 31.	Leather and leather products
Major Group 32.	Stone, clay, glass, and concrete products
Major Group 33.	Primary metal industries

Major Group 34.	Fabricated metal products, except machinery and transportation equipment
Major Group 35.	Industrial and commercial machinery and computer equipment
Major Group 36.	Electronic and other electrical equipment and components, except computer equipment
Major Group 37.	Transportation equipment
Major Group 38.	Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
Major Group 39.	Miscellaneous manufacturing industries

DIVISION E. TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES

Major Group 49.	Sanitary services (sewerage systems, refuse systems, sanitary services not elsewhere classified)

MISCELLANEOUS FOOD PREPARATIONS AND KINDRED PRODUCTS

Industrial facilities listed in Industry Number 2091 are not considered "industrial facilities" as defined in §15.2 of this title (relating to Definitions).

2091	Canned and Cured Fish and Seafoods

Establishments primarily engaged in cooking and canning fish, shrimp, oysters, clams, crabs, and other seafoods, including soups; and those engaged in smoking, salting, drying, or otherwise curing fish and other seafoods for the trade. Establishments primarily engaged in shucking and packing fresh oysters in nonsealed containers, or in freezing or preparing fresh fish, are classified in Industry 2092.

--- Canned fish, crustacea, and mollusks
--- Caviar, canned
--- Chowder, fish and seafood: canned
--- Clam bouillon, broth, chowder, juice: bottled or canned
--- Codfish: smoked, salted, dried and pickled

--- Crab meat, canned and cured
--- Finnan haddie (smoked haddock)
--- Fish and seafood cakes: canned
--- Fish egg bait, canned
--- Fish: cured, dried, pickled, salted, and smoked
--- Herring: smoked, salted, dried, and pickled
--- Mackerel: smoked, salted, dried, and pickled
--- Oysters, canned and cured
--- Salmon: smoked, salted, dried, canned, and pickled
--- Sardines, canned
--- Seafood products, canned and cured
--- Shellfish, canned and cured
--- Shrimp, canned and cured
--- Soups, fish and seafood: canned
--- Stews, fish and seafood: canned
--- Tuna fish, canned

MISCELLANEOUS FOOD PREPARATIONS AND KINDRED PRODUCTS

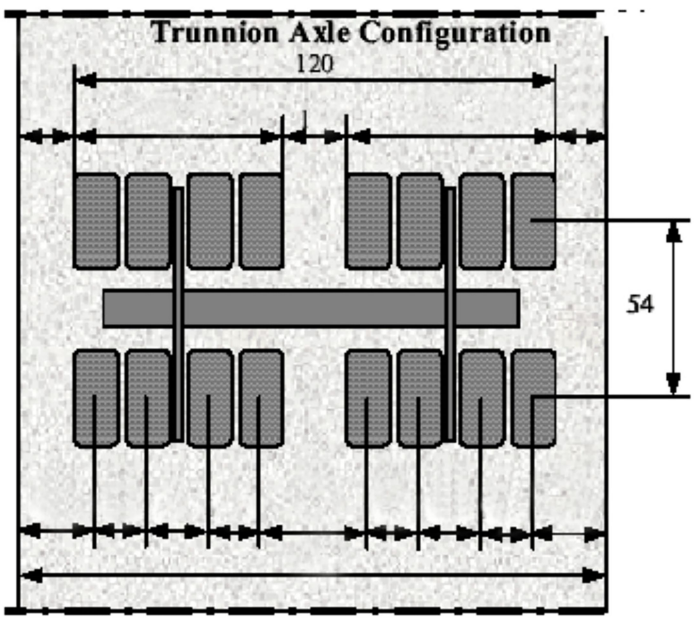
Industrial facilities listed in Industry Number 2092 are not considered "industrial facilities" as defined in §15.2 of this title (relating to Definitions).

2092	Prepared Fresh or Frozen Fish and Seafoods

Establishments primarily engaged in preparing fresh and raw or cooked frozen fish and other seafoods and seafood preparations, such as soups, stews, chowders, fishcakes, crabcakes, and shrimpcakes. Prepared fresh fish are eviscerated or processed by removal of heads, fins, or scales. This industry also includes establishments primarily engaged in the shucking and packing of fresh oysters in nonsealed containers.

--- Chowders, fish and seafood: frozen
--- Crabcakes, frozen
--- Crabmeat picking
--- Crabmeat, fresh: packed in nonsealed containers
--- Fish and seafood cakes, frozen
--- Fish fillets
--- Fish sticks
--- Fish: fresh and frozen, prepared
--- Oysters, fresh: shucking and packing in nonsealed containers
--- Seafoods, fresh and frozen
--- Shellfish, fresh and frozen
--- Shellfish, fresh: shucked, picked, or packed
--- Shrimp, fresh and frozen
--- Soups, fish and seafood: frozen
--- Stews, fish and seafood: frozen

Figure: 43 TAC §28.125(b)(6)(C)



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Public Hearing on Proposed Amendments to 4 TAC Chapter 9, Concerning Seed Quality

Date of Meeting: January 13, 2023

Time of Meeting: 10:00 a.m.

Hearing: The Texas Department of Agriculture (Department) will hold a public hearing on January 13, 2023, at 10:00 a.m., to receive public comment on the Department's proposed amendments to its Seed Quality Program (Program) rules, Texas Administrative Code, Title 4, Part 1, Chapter 9 (Seed Quality), §§9.1 - 9.5, 9.7, 9.9, 9.11, and 9.12. The proposed amendments were published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8177).

The proposed amendments can also be accessed through the Program's webpage at https://www.texasagriculture.gov/Regulatory-Programs/Seed-Quality. The hearing is being held in compliance with Section 61.002 of the Texas Agriculture Code, which requires the Department to conduct a public hearing on proposed new rules and amendments for this chapter.

This public hearing will be held online via the Microsoft TEAMS application only at https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzI4YjE1MDctZDdjMy00YTU5LThkNTctMWEwNzNlOTlmZmEz%40thread.v2/0?context=%7b%22Tid%22%3a%220d16d504-d03a-4e2e-8316-8408747d7c7f%22%2c%22Oid%22%3a%226d7dd33a-1c80-4c77-8cfe-972745d6226b%22%7d.

The meeting ID is 298 250 010 341. There is no physical location for this hearing.

Members of the public who would like to attend the hearing may also join telephonically by calling +1 512-910-3546 and entering conference code 119857302#.

Agenda:

1. Call to Order

2. Public hearing to receive comments from interested persons concerning proposed amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 9 (Seed Quality). Any interested person may appear and offer comments or statements, either orally or in writing; however, questioning commenters will be reserved exclusively for Department staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, the Department reserves the right to restrict statements in terms of time or repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member when possible.

3. Adjourn

Comments:

Public Comment or Testimony. The Department welcomes public comments pertaining to the proposed amendments. Members of the public who would like to provide public comment may choose from the following options:

Oral Comments. Each public comment is limited to five minutes. The Department may extend this time period if it considers the circumstances appropriate to do so. Speakers must state their name and on whose behalf they are speaking (if anyone).

Written Comments. Written comments regarding the proposed rule amendments may be submitted instead of, or in addition to, oral comments until January 16, 2023 at 5:00 p.m. Written comments may be sent to Morris Karam, Assistant General Counsel, Texas Department of Agriculture, at P.O. Box 12847, Austin, Texas 78711, or Morris.Karam@TexasAgriculture.gov.

Auxiliary Aids or Services for Persons with a Disability. If you would like to attend the meeting and require auxiliary aids or services, please notify the Texas Department of Agriculture at least 72 hours before the meeting, so that appropriate arrangements can be made. Requests may be made by telephone to Morris Karam, at (512) 463-3620 or by email to Morris.Karam@TexasAgriculture.gov.

For more information regarding this public hearing, please contact Morris Karam, Assistant General Counsel, Texas Department of Agriculture, at P.O. Box 12847, Austin, Texas 78711, (512) 463-3620, or Morris.Karam@TexasAgriculture.gov.

TRD-202205160
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: December 21, 2022

♦ ♦ ♦

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - November 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 November 2022 is $58.59 per barrel for the three-month period beginning on August 1, 2022, and ending October 31, 2022. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of November 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 November 2022 is $5.14 per mcf for the three-month period beginning on August 1, 2022, and ending October 31, 2022. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 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 November 2022 is $84.39 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 November 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 November 2022 is $6.43 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 November 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-202205134
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: December 20, 2022

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/26/22 - 01/01/23 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/26/22 - 01/01/23 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/23 - 01/31/23 is 7.50% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/23 - 01/31/23 is 7.50% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202205139
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 20, 2022

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from CTECU (Houston) seeking approval to merge with Chevron Federal Credit Union (Concord, CA), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202205151
Michael S. Riepen
Commissioner
Credit Union Department
Filed: December 21, 2022

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Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Cabot Community Credit Union #1, Pampa, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within Gray County, Texas, to be eligible for membership in the credit union.

An application was received from Cabot Community Credit Union #2, Pampa, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within Roberts County, Texas, to be eligible for membership in the credit union.

An application was received from Matagorda County Credit Union, Bay City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located in Matagorda, Wharton and Brazoria Counties, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union #1, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located in Jefferson County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union #2, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located in Hardin County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union #3, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located in Orange County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union #4, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located in San Jacinto County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union #5, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located in Polk County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union #6, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located in Tyler County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202205143
Michael S. Riepen
Commissioner
Credit Union Department
Filed: December 21, 2022

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Field of Membership - Approved

Energy Capital Credit Union (Houston) - See *Texas Register* dated on July 29, 2022.

Eastex Credit Union (Evadale) - See *Texas Register* dated on October 28, 2022.

TRD-202205142
Michael S. Riepen
Commissioner
Credit Union Department
Filed: December 21, 2022

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Texas Education Agency

Request for Prekindergarten Progress Monitoring Instrument Submissions

(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 cited in this miscellaneous document are not included in the print version of the Texas Register. The figures are available in the on-line version of the December 30, 2022, issue of the Texas Register.)

Filing Authority. Texas Education Code, §29.169(c)

Description. The Texas Education Agency (TEA) is notifying publishers, school districts, and charter schools that prekindergarten student progress monitoring tools (English and Spanish) may be submitted for review for inclusion on the *2023-2027 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments.* The *2023-2027 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments* will be available in spring 2023 so that school districts and open-enrollment charter schools may order instruments for implementation starting in the 2023-2024 school year. Instruments selected for the commissioner's list will remain on the list for a minimum of four school years. Inclusion on the *2023-2027 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments* will be evaluated in terms of psychometric properties, administrative features, scoring, and efficiency (e.g., cost, time to administer). *TEA will only accept assessments that assess all the following domains:* social and emotional development (a.k.a. health and wellness), emergent literacy - language and communication, emergent literacy - reading, emergent literacy - writing, and mathematics. In addition, all submitted instruments must, minimally, address the required skills within each domain as outlined in *Table 1. Required domains and skills.*

Prekindergarten. Texas Education Code (TEC), §29.169, authorizes the commissioner of education to develop a recommended list of student progress monitoring tools for school districts and charter schools to measure the progress of students in meeting the recommended prekindergarten learning outcomes. In accordance with TEC, §29.169, a school district shall select and implement appropriate methods for evaluating the district's program classes by measuring student progress and shall make data from the results of program evaluations available to parents. A school district may administer diagnostic assessments to students in a program class to evaluate student progress but may not administer a state standardized assessment instrument. An assessment instrument administered to a prekindergarten program class must be selected from a list of *appropriate prekindergarten assessment instruments identified by the commissioner.*

At the beginning and end of the school year, the progress of each student in meeting the recommended end of prekindergarten year outcomes must be assessed, using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures: (A) social and emotional development, which may be referred to as "health and wellness" in a progress monitoring tool; (B) emergent literacy - language and communication; (C) emergent literacy - reading; (D) emergent literacy - writing; and (E) mathematics (19 TAC §102.1003(c)).

Each district or charter school must select a progress monitoring instrument from the *2023-2027 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments* to measure each of the five domains and required skills listed in *Table 1. Required domains and skills.* Specific details regarding the end of prekindergarten year outcomes associated with each domain and all skills within each domain may be found in the *Texas Prekindergarten Guidelines (2022).*

Table 1. Required domains and skills.

See the *Guidelines for the Implementation of TEA Criteria for the Evaluation of English and Spanish Prekindergarten Progress Monitoring Instruments* section of this notice for additional information. Submissions must include a concise summary of the evidence base for each requested component in this request, along with a brief discussion of how the instrument aligns with the cited research. Submissions must include supporting documentation.

Guidelines for the Implementation of TEA Criteria for the Evaluation of English and Spanish Prekindergarten Progress Monitoring Instruments

General

1. The instrument must be intended for progress monitoring use in prekindergarten. *Progress monitoring* refers to relatively brief measures that are conducted on a routine basis to provide information on what children are learning and rates of improvement across the prekindergarten year. Results of progress monitoring measures should be predictive of lengthier (e.g., comprehensive) standardized mea-

sures. As progress monitoring measures are relatively brief, teachers can conduct them at least three times across a school year and learn which students are or are not demonstrating adequate progress. This knowledge should allow teachers to determine what children are learning and adapt their curricular activities and instructional approaches to be more responsive to children's needs. All submitted instruments must allow for assessment a minimum of three times across the school year (i.e., beginning, middle and end of year).

2. Submitted instruments must be considered standardized assessments. This means the instrument measures skills using common sets of questions, tasks, and materials that are administered and scored in a consistent manner. The instrument must also be reliable and valid and meet all applicable psychometric requirements outlined below.

3. Submitted instruments must consist of both English and Spanish versions. English and Spanish versions must assess the same domains and skills within each domain. In addition, the psychometric requirements listed below must be provided for both English and Spanish versions of the instrument.

4. The length of time needed to administer each domain must be appropriate for a prekindergarten student.

5. Some criteria may be measured through observation, informal assessments, reflection, collection of children's work in portfolios, or checklists. However, informal assessments may not be the primary method for monitoring children's progress.

Domains and Skills

6. To be considered for review, prekindergarten progress monitoring instruments must be multidimensional, meaning they must: a) directly assess all five domains (i.e., social and emotional development, emergent literacy - language and communication, emergent literacy - reading, emergent literacy - writing, and mathematics) as specified in the *2022 Texas Prekindergarten Guidelines;* and b) directly assess all required skills listed for each domain in *Table 1. Required domains and skills.*

7. The instrument must have a scoring structure that yields a separate score for each of the five required domains. An instrument will only be considered to "assess" a domain if it provides a separate score for that domain.

8. The instrument must provide a separate score for each of the skills measured within each of the five domains. An instrument will only be considered to "assess" a skill within a domain if it provides a separate score for that skill.

9. The instrument must be individually administered.

10. Administration and interpretation of the instrument by a classroom teacher must be allowable and feasible. Specifically, the qualifications for those who administer and interpret the instrument (as specified in publisher's guidelines) should be within the coursework and/or licenses typically completed by certified teachers in Texas public schools. Administration procedures requiring extensive timing, the establishment of a basal and ceiling, complex judgments, and/or subjective ratings that require the special training of a diagnostician are not considered feasible for teacher administration.

Psychometric Requirements

11. If the instrument is norm-referenced, it must have a representative norming sample in terms of the sample size and the groups represented. Norm-referenced tests must be representative of the population of students in the grade(s) or at the age(s) for which the instrument is intended. Criterion-referenced decisions about criterion mastery, non-mastery, risk, and impairment have special requirements for reliability and validity (see guidelines 12 and 13 below).

12. At a minimum, an instrument must possess adequate reliability as demonstrated by independent research. For instruments built using classical test theory, reliability data/information should include, minimally, internal consistency (e.g., alpha coefficients) and alternate form and/or test-retest reliability data as appropriate for the instrument's purpose and intended use. For instruments developed using item response models, suitable psychometric data from the test development process should be submitted, including, but not limited to, the standard error of measurement, indices of item discrimination and difficulty, and total test information. Classifications resulting from criterion-referenced tests (e.g., mastery, non-mastery, risk, impairment, etc.) must be shown to be reliable. Instruments that depend on examiner ratings must demonstrate appropriate forms of inter-rater reliability.

13. Decisions based on test results must be supported by validity evidence established by independent research. Evidence of concurrent or predictive construct, content, and criterion validity (e.g., correlations with measures of similar and/or dissimilar constructs, results of confirmatory factor analyses, etc.), and discriminant and convergent validity are appropriate, depending on the purpose and intended uses of the measure. Classifications resulting from criterion-referenced tests (e.g., mastery, non-mastery, risk, impairment, etc.) must be shown to be valid and demonstrate both sensitivity and specificity. Evidence of predictive validity should be submitted for measures that claim to predict future status or the likelihood of subsequent success.

14. Normative and technical data for the instrument must be no more than 15 years old (2008 or later).

Additional Requirements/Preferences 15. Instruments must allow for the generation of parent reports. 16. Instruments that have the following are preferred: a. Instructional resources for teachers that are aligned to/support the instrument (e.g., teacher grouping support, instructional activities targeting specific student or student group instructional needs, etc.). b. Instructional resources for families that are aligned to/support the instrument (e.g., family activities aligned to student needs, etc.).

Prekindergarten Submission Instructions

1. Complete the following *Prekindergarten Submission Form.* Provide written responses to all inquiries and attach any supporting technical evidence using the prompts provided in each section. Email the completed form with all attachments embedded to klsanti@uh.edu. This email must be received no later than 3:00 p.m. (Central Time) on Tuesday, January 31, 2023.

Prekindergarten Submission Form

Any submissions received after this date and time will not be accepted. The email must include the following information: name of submitting agency, date of submission, primary contact name, primary contact phone number, and primary contact email address. The primary contact should be the individual who can be contacted in the event reviewers need to ask questions or request more information pertaining to the submission. Delays in responding to reviewers' questions may result in an incomplete review; submissions with incomplete reviews will not be considered for inclusion on the *2023-2027 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments.*

2. The following (2.1 and 2.2) must be submitted to and received by the University of Houston no later than 3:00 p.m. (Central Time) on Tuesday, January 31, 2023. Any submissions received after this date and time will not be accepted.

2.1. Two thumb drives including electronic versions of the submission form and all supporting documentation.

2.2. Online or electronic instruments must include online access information (e.g., web address, login, password) and/or an installable copy of the software.

2.3. Items 2.1 and 2.2 above must be submitted in clearly marked packages with the following information: name of submitting agency, date of submission, primary contact name, primary contact phone number, and primary contact email address.

2.4. All required submission information must be submitted to: University of Houston, College of Education, Attn: Kristi L. Santi, Ph.D., Farish Hall 318D, 3657 Cullen Blvd., Houston, Texas 77204-5023.

3. A confirmation of receipt of all required materials will be emailed to the contact email address provided.

4. Submissions that do not include all required and supporting materials (i.e., emailed form and attachments, three paper copies of form and attachments, two thumb drives with form and attachments, and access information or software for online/electronic instruments) or submissions that are not received by the deadline will not be reviewed.

Please note that all submissions will be reviewed using the *Guidelines for the Implementation of TEA Criteria fort he Evaluation of English and Spanish Prekindergarten Progress Monitoring Instruments* and responses to the questions provided in the prekindergarten submission form. A rolling review will be implemented, and instruments will be reviewed in the order they are received.

Further Information. For clarifying information, contact the TEA Early Childhood Education Division at (512) 463-8886.

TRD-202205158
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 21, 2022

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 31, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 31, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 2020 Landmark Capital, LLC; DOCKET NUMBER: 2022-0084-PWS-E; IDENTIFIER: RN111387411; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 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; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $1,563; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Barnett Gathering, LLC; DOCKET NUMBER: 2017-1487-AIR-E; IDENTIFIER: RN105010714; LOCATION: Rendon, Tarrant County; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §116.110(a) and §116.604(2) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to renew the registration to use a standard permit by the date the registration expires; and 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O3114/General Operating Permit Number 511, Site-wide Requirements Number (b)(2), and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: $49,875; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Carla Jane Karl; DOCKET NUMBER: 2022-1358-WOC-E; IDENTIFIER: RN111538872; LOCATION: Bowie, Montague County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Carr Land Development LLC; DOCKET NUMBER: 2022-1638-WQ-E; IDENTIFIER: RN111577516; LOCATION: Mineola, Wood County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2020-0850-AIR-E; IDENTIFIER: RN100215615; LOCATION: Orange, Orange County; TYPE OF FACILITY: polyethylene manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.560(g) and §60.564(d), New Source Review Permit Number 19394, Special Conditions Number 2.B, Federal Operating Permit Number O1310, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 9, and Texas Health and Safety Code, §382.085(b), by failing to comply with the exemption limits for individual vent streams that emit continuous emissions; PENALTY:

$13,200; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,280; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Earth; DOCKET NUMBER: 2022-1417-UTL-E; IDENTIFIER: RN101187995; LOCATION: Earth, Lamb County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $530; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(7) COMPANY: City of La Grulla; DOCKET NUMBER: 2022-1457-UTL-E; IDENTIFIER: RN101417335; LOCATION: La Grulla, Starr County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $1,120; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: City of Rotan; DOCKET NUMBER: 2022-1268-UTL-E; IDENTIFIER: RN101440659; LOCATION: Rotan, Fisher County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $650; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: CYPRESS VALLEY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1429-UTL-E; IDENTIFIER: RN101184745; LOCATION: Woodlawn, Harrison County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $625; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: CYPRESS VALLEY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1439-UTL-E; IDENTIFIER: RN101436616; LOCATION: Woodlawn, Harrison County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $600; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: ETC Texas Pipeline, Ltd.; DOCKET NUMBER: 2017-0562-AIR-E; IDENTIFIER: RN106225436; LOCATION: Ganago, Jackson County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 113.1090, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.7(b)(1) and §63.6645(g), Federal Operating Permit (FOP) Number O3587, Special Terms and Conditions (STC) Numbers 1.A and 7, New Source Review (NSR) Permit Numbers 98529 and PSDTX1264, Special Conditions (SC) Number 4.B, and Texas Health and Safety Code (THSC), §382.085(b), by failing to timely submit a stack test notification at least 60 days prior to the date testing was scheduled as required by 40 CFR Part 63 Subparts A and ZZZZ; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O3587, STC Number 7, NSR Permit Numbers 98529 and PSDTX1264, SC Number 1, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), FOP Number O3587, STC Number. 7, NSR Permit Number 98529 and PSDTX1264, SC Number 24.A, and THSC, §382.085(b), by failing to timely submit a stack test notification at least 45 days in advance of testing as required by NSR Permit Numbers 98529 and PSDTX1264; 30 TAC §116.110(a) and §116.116(b)(1) and THSC, §382.0518(a) and §382.085(b), by failing to comply with the representations with regards to construction plans and operation procedures in a permit application; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3587, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $209,360; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8921; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(12) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2022-0232-AIR-E; IDENTIFIER: RN102501020; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 19016, Special Conditions Number 1, Federal Operating Permit Number O2276, General Terms and Conditions and Special Terms and Conditions Number 18, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,000; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Goldking Minerals Management, L.L.C.; DOCKET NUMBER: 2022-1369-AIR-E; IDENTIFIER: RN103904959; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: crude oil production facility; RULES VIOLATED: 30 TAC §101.10(b)(2) and (e) and Texas Health and Safety Code, §382.085(b), by failing to submit an annual emissions inventory update for the previous calendar year by March 31st of each year or as directed by the commission; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Gomez, Eric S; DOCKET NUMBER: 2022-1640-WOC-E; IDENTIFIER: RN106020878; LOCATION: Hearne, Robertson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Juan Grimaldo; DOCKET NUMBER: 2022-1657-WOC-E; IDENTIFIER: RN105378772; LOCATION: Houston, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: LAKEVIEW WATER SUPPLY and SEWER SERVICE CORPORATION; DOCKET NUMBER: 2022-1224-UTL-E; IDENTIFIER: RN101278307; LOCATION: Lakeview, Hall County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $625; ENFORCEMENT COORDINATOR: Daniel Brill, (512) 239-2564; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: MIDFIELD WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1463-UTL-E; IDENTIFIER: RN102676780; LOCATION: Midfield, Matagorda County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $460; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: MIDWAY WATER UTILITIES, INCORPORATED; DOCKET NUMBER: 2022-0927-PWS-E; IDENTIFIER: RN101233120; LOCATION: Huron, Hill County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(6), by failing to ensure that clearwells and potable water storage tanks, including associated appurtenances such as valves, pipes, and fittings, are thoroughly tight against leakage; and 30 TAC §290.43(c)(8), by failing to ensure that all clearwells, ground storage tanks, standpipes, and elevated storage tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; PENALTY: $1,575; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Samuel Klaerner dba Chaparral Water System; DOCKET NUMBER: 2022-1199-UTL-E; IDENTIFIER: RN101227270; LOCATION: Gillespie, Gillespie County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $600; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: SIMPLY AQUATICS, INCORPORATED; DOCKET NUMBER: 2022-0868-PWS-E; IDENTIFIER: RN101651925; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(iv), (B)(iii), and (D)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.42(m), by failing to enclose the treatment plant and related appurtenances by an intruder-resistant fence with gates that shall be locked during periods of darkness and when the facility is unattended; and 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; PENALTY: $4,595; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: SIMPLY AQUATICS, INCORPORATED; DOCKET NUMBER: 2022-1307-UTL-E; IDENTIFIER: RN102675303; LOCATION: Broaddus, San Augustine County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $700; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(22) COMPANY: SIMPLY AQUATICS, INCORPORATED; DOCKET NUMBER: 2022-1308-UTL-E; IDENTIFIER: RN101247815; LOCATION: Broaddus, San Augustine County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $765; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: TIGER POWER, INCORPORATED dba Tiger Power; DOCKET NUMBER: 2022-0121-PST-E; IDENTIFIER: RN101800712; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) system for releases 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: $3,512; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2021-1206-AIR-E; IDENTIFIER: RN100214386; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 38754 and PSDTX324M14, Special Conditions Number 1, Federal Operating Permit Number O1458, General Terms and Conditions and Special Terms and Conditions Number 22, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $44,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $17,700; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(25) COMPANY: WOODLAND HILLS WATER, LLC; DOCKET NUMBER: 2022-0057-PWS-E; IDENTIFIER: RN101200483; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service;

PENALTY: $7,000; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202205130
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 20, 2022

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Enforcement Orders

An agreed order was adopted regarding Brighton Manor Apartments, L.P., Docket No. 2019-1204-PWS-E on December 20, 2022 assessing $2,627 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Moody, Docket No. 2020-0298-MLM-E on December 20, 2022 assessing $2,179 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Pence, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UVM INVESTMENT INC dba Conoco Express, Docket No. 2020-0570-PST-E on December 20, 2022 assessing $4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AIZA, INC. dba Hondo Shell, Docket No. 2021-0166-PST-E on December 20, 2022 assessing $1,350 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202205145
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 21, 2022

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Notice of District Petition

Notice issued December 21, 2022

TCEQ Internal Control No. D-10212022-034; HMH Caddo Mills Land, LP, a Texas limited partnership, (Petitioner) filed a petition for creation of Hunt County Municipal Utility District No. 5 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District (3) the proposed District will contain approximately 128 acres located within Hunt County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Caddo Mills. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system for domestic and commercial purposes; construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (3) construct, install, maintain, purchase, and operate facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $23,785,000 ($15,860,000 for water, wastewater, and drainage and $7,925,000 for roads). The Property is located wholly within the extraterritorial jurisdiction of the City of Caddo Mills, Hunt County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the proposed District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202205147

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 21, 2022

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Notice of District Petition

Notice issued December 21, 2022

TCEQ Internal Control No. D-09272022-056; 500 Choctaw Partners, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Choctaw Ranch Municipal Utility District of Grayson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 and Article III, §52 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 544 acres located within Grayson County, Texas; and (4) some of the land within the proposed District is partially within the extraterritorial jurisdiction of the City of Tom Bean. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of it boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, the proposed District will be granted road powers. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $81,275,000 ($56,880,000 for water, wastewater, and drainage and $24,395,000 for roads). The Property is located partially within the extraterritorial jurisdiction of the City of Tom Bean, Grayson County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the proposed District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202205149
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 21, 2022

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Notice of District Petition

Notice issued December 21, 2022

TCEQ Internal Control No. D-09122022-024; Cedar Creek East LP, a Texas limited partnership and NEU Community Creekside LLC, a Texas limited liability company, (the "Petitioners") filed an amended petition (petition) for creation of Bastrop County Municipal Utility District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there are three lienholders, Stallion Texas Real Estate Fund, LLC, Stallion Texas Real Estate Fund II-REIT, LLC, and Austerra Stable Income Fund, L.P., on the property to be included in the proposed District and the aforementioned entities have consented to the creation of the District; (3) the proposed District will contain approximately 575.264 acres located within Bastrop County, Texas; and (4) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of Bastrop (City). The petition further states that the work proposed to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants,

equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $125,685,000 (including $102,940,000 for water, wastewater, and drainage plus $13,425,000 for roads and $9,320,000 for recreational facilities). In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, a petition was submitted to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, a petition was submitted to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to proceed to the TCEQ for inclusion of the land into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202205150

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 21, 2022

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 31, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 31, 2023** . The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: FOOTHILLS MOBILE HOME RANCH, INC.; DOCKET NUMBER: 2021-0276-PWS-E; TCEQ ID NUMBER: RN102687563; LOCATION: 402 July Lane near Boerne, Kendall County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.106(f)(3)(C), by failing to comply with the maximum contaminant level of 4.0 milligrams per liter for fluoride based on the running annual average; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of each quarter for the first through third quarters of 2020; PENALTY: $2,243; STAFF ATTORNEY: Benjamin Pence, Litigation, MC 175, (512) 239-2157; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: GEO SPECIALTY CHEMICALS, INC.; DOCKET NUMBER: 2019-1322-IWD-E; TCEQ ID NUMBER: RN100219070; LOCATION: 739 Independence Parkway South, on the west side of Independence Parkway South, approximately one mile north of the intersection of Independence Parkway South and State Highway 225 (Pasadena Highway) near Deer Park, Harris County; TYPE OF FACILITY: organic chemical manufacturing plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0002558000, Permit Conditions Numbers 2.(d) and 2.(g), by

failing to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0002558000, Permit Conditions Numbers 2.(d) and 2.(g), by failing to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0002558000, Permit Conditions Numbers 2.(d) and 2.(g), by failing to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1), (4), and (5), and TPDES Permit Number WQ0002558000, Operational Requirements Number 4 and Permit Conditions Numbers 2.(d) and 2.(g), by failing to install adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0002558000, Effluent Limitations and Monitoring Requirements (Outfall Number 002) Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (9), and TPDES Permit Number WQ0002558000, Monitoring and Reporting Requirement Number 7, by failing to report an unauthorized discharge orally to the Regional Office within 24 hours of becoming aware of the noncompliance, and in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; and TWC, §26.121(a)(2), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0002558000, Permit Conditions Numbers 2.(d) and 2.(g) and Other Requirements Number 4, by failing to prevent an unauthorized discharge of other waste into or adjacent to any water in the state; PENALTY: $145,412; SUPPLEMENTAL ENVIRONMENTAL PROJECT: $72,706; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202205135
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 20, 2022

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 31, 2023.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 31, 2023.** The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Amanda Hahn; DOCKET NUMBER: 2019-1401-MSW-E; TCEQ ID NUMBER: RN110491065; LOCATION: Trinity Cove Section 02, Block 2 Lot 09 (Property ID Number 18319), Trinity County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,250; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Michael Hughes formerly doing business as Superior Tire & Service; DOCKET NUMBER: 2021-0961-MLM-E; TCEQ ID NUMBER: RN111197240; LOCATION: 1175 North Main Street, Vidor, Orange County; TYPE OF FACILITY: automotive mechanic shop; RULES VIOLATED: Texas Health and Safety Code, §361.112(a), and 30 TAC §§328.56(d)(2), 328.59(b)(1), and 328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; 30 TAC §328.56(d)(4), by failing to monitor tires stored outside for vectors and utilize appropriate vector control measures at least once every two weeks; 30 TAC §328.58(f), by failing to retain all manifests, work orders, invoices, or other records to support activities related to the accumulation, handling, and shipment of used or scrap tires or scrap tire pieces at the facility; 30 TAC §328.61(g), by failing to maintain an adequate fire protection system using fire hydrants or a firewater storage pond or tank at the facility; 30 TAC §§328.59(b)(6), 328.62(d), and 328.63(d)(6), by failing to submit, to the executive director, an annual summary of the facility activities from January 1 - December 31 of each calendar year, showing the number and disposition of used or scrap tires or tire pieces received and the number of used or scrap tires or tire pieces removed from the facility no later than March 1 of the year following the end of the reporting period; 30 TAC §328.63(c), by failing to obtain a registration to process scrap tires; 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(c)(1), by failing to label or clearly mark containers used to store used oil with the words "Used Oil"; 30 TAC §328.25(b), by failing to maintain a copy of the bill of lading for each shipment of used oil filters for at least three years after the date the filters were transported, stored, or processed at the facility; 30 TAC §324.7(3)(A), by failing to post and maintain a durable and legible sign identifying the facility as a household used-oil collection center; 30 TAC §324.4 and §328.23(c), by failing to secure the bulk used oil filter container in a closed, waterproof manner; and 30 TAC §335.4, by causing, suffering, allowing, or permitting the unauthorized disposal of industrial and hazardous waste; PENALTY: $37,430; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Vernon Session and Ruby Session; DOCKET NUMBER: 2021-0621-PST-E; TCEQ ID NUMBER: RN101294189; LOCATION: 201 North Avenue East, Haskell, Haskell County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system and a former retail refueling station; RULES VIOLATED: 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C; and 30 TAC §334.10(b)(2), by failing to provide UST records immediately upon request by TCEQ personnel; PENALTY: $1,575; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202205136
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 20, 2022

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 285

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 285, On-Site Sewage Facilities, §§285.2, 285.3, 285.7, 285.32 - 285.34, 285.38, 285.39, 285.64, and 285.91, under the requirements of Texas Health and Safety Code (THSC), §363.062(f) and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would amend Chapter 285 in response to petitions approved at Commissioner's Agenda, as well as implement House Bill 1680, which took effect September 1, 2021. The proposed rules would clarify requirements, update language to be more consistent with industry standards, require technical changes to provide easier access for maintenance, and incorporate language that allows separately leased individual parts of federal lands to be considered as separate tracts for the purposes of Chapter 285. In addition to these changes, several typos and incorrect references would be corrected.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on January 30, 2023, 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.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, January 26, 2023. 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 Friday, January 27, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTY1Y-zE1NTMtN2UzZC00ZDVmLWEwMWQtYTBjYTBkMjQ0ZTJk%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 Cecilia Mena, 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://tceq.commentinput.com/*.File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2021-030-285-CE. The comment period closes on January 31, 2023. 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 Donna Cosper, Program Support Section, at (512) 239-1324 or donna.cosper@tceq.texas.gov.

TRD-202205074
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 16, 2022

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Notice of Request for Public Comment and Notice of Public Meetings on Four Draft Total Maximum Daily Loads for Indicator Bacteria in Neches River Tidal

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment the four draft Total Maximum Daily Loads (TMDLs) for indicator bacteria in Neches River Tidal, of the Neches River Basin, within Jasper, Jefferson, and Orange counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft TMDLs in four assessment units: Neches River Tidal 0601_04, 0601_03, 0601_02, and 0601_01.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurance.

After the public comment period, TCEQ may revise the draft TMDLs if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption, the final TMDLs and a response to all comments received will be made available on TCEQ's website. The TMDLs will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action. Upon approval by EPA, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

Public Meeting and Testimony. The public meeting for the draft TMDLs will be held at **Lower Neches Valley Authority Adminis-**

trative Office, 7850 Eastex Freeway, Beaumont, Texas 77708 on **January 18, 2023,** at **6:00 p.m.**

Please periodically check *https://www.tceq.texas.gov/waterquality/tmdl/nav/118-nechestidal-bacteria* before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft TMDLs may be submitted to Jason Leifester, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted electronically to https://tceq.commentinput.com/. File size restrictions may apply to comments submitted via the TCEQ Public Comments system. All written comments must be received at TCEQ by midnight on January 30, 2023, and should reference Four Total Maximum Daily Loads for Indicator Bacteria in Neches River Tidal.

For further information regarding the draft TMDLs, please contact Jason Leifester at *Jason.Leifester@tceq.texas.gov.* The draft TMDLs can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/118-nechestidal-bacteria.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Jason Leifester at *Jason.Leifester@tceq.texas.gov.* Requests should be made as far in advance as possible.

TRD-202205066
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 16, 2022

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Notice of Water Quality Application

The following notice was issued on December 14, 2022:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE NOTICE ISSUANCE DATE.

INFORMATION SECTION

Fulshear Municipal Utility District No. 3B, has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0015443001 to authorize an increase in the Interim II Phase flow from 240,000 gallons per day to 720,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 960,000 gallons per day. The facility is approximately 1.46 miles southeast of the intersection of Interstate Highway 10 and Woods Road, in Waller County, Texas 77423.

TRD-202205146
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 21, 2022

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Notice of Water Rights Application

Notice Issued December 20, 2022

APPLICATION NO. 12-3642A

Natural Dairy Grower Land, LP, 600 County Road 252, Gustine, Texas 76455, Applicant, seeks to amend Certificate of Adjudication No. 12-3642 to add a place of use in Comanche County and add seven diversion reaches located on Indian Creek, an unnamed tributary of the South Leon River, the South Leon River, the Leon River, and an unnamed tributary of Walnut Creek, Brazos River Basin in Comanche County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on June 15, 2020. Additional information and fees were received on November 12, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 9, 2020. The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by January 09, 2023. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by January 09, 2023. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by January 09, 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 3642 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general

public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202205148
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality

Filed: December 21, 2022

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of October 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	Amend-ment Number	Date of Action
LONGVIEW	SYNTHOMER ADHESIVE TECHNOLOGIES LLC	L07166	LONGVIEW	00	10/20/22

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AMARILLO	TEXAS ONCOLOGY PA	L06149	AMARILLO	10	10/26/22
ARLINGTON	COLUMBIA MEDICAL CENTER OF ARLINGTON SUBSIDIARY LP	L02228	ARLINGTON	93	10/19/22
ATHENS	ATHENS HOSPITAL LLC DBA UT HEALTH EAST TEXAS ATHENS HOSPITAL	L06979	ATHENS	02	10/31/22
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L06335	AUSTIN	43	10/17/22
BAYTOWN	JACINTO MEDICAL CENTER LP DBA JACINTO MRI AND DIAGNOSTIC CENTER	L06762	BAYTOWN	01	10/28/22
BROWNWOOD	HENDRICK MEDICAL CENTER BROWNWOOD	L02322	BROWNWOOD	72	10/19/22
DALLAS	TEXAS HEALTH PHYSICIANS GROUP	L06578	DALLAS	09	10/21/22
DEER PARK	SHELL CHEMICAL LP	L04933	DEER PARK	36	10/19/22
DESOTO	DIAB AMERICAS LP	L06208	DESOTO	05	10/28/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE SIERRA CAMPUS	L02365	EL PASO	123	10/28/22
FRISCO	BAYLOR SCOTT & WHITE MEDICAL CENTER - CENTENNIAL	L06992	FRISCO	05	10/18/22
HOUSTON	MEDICAL CENTER CARDIOVASCULAR ASSOCIATION	L07032	HOUSTON	03	10/19/22
HOUSTON	THE METHODIST HOSPITAL	L06948	HOUSTON	07	10/24/22
HOUSTON	CHI ST LUKES HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER	L06661	HOUSTON	09	10/18/22
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WEST HOSPITAL	L06358	HOUSTON	14	10/19/22
HOUSTON	MEMORIAL MRI & DIAGNOSTIC LLC	L05997	HOUSTON	14	10/19/22
HOUSTON	INSIGNIA TTG PARENT LLC	L05791	HOUSTON	18	10/17/22
HOUSTON	TEXAS HEART MEDICAL GROUP	L05229	HOUSTON	19	10/17/22
HOUSTON	MEMORIAL HERMANN MEDICAL GROUP	L06430	HOUSTON	49	10/17/22
HOUSTON	TEXAS NUCLEAR IMAGING LP	L05009	HOUSTON	58	10/17/22
HOUSTON	THE UNIVERSITY OF TEXAS HEALTHSCIENCE CENTER AT HOUSTON	L02774	HOUSTON	81	10/19/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

HOUSTON	KELSEY – SEYBOLD MEDICAL GROUP PLLC DBA KELSEY-SEYBOLD CLINIC	L00391	HOUSTON	83	10/19/22
HOUSTON	HARRIS COUNTY HOSPITAL DISTRICT	L01303	HOUSTON	107	10/26/22
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN NORTHEAST HOSPITAL	L02412	HOUSTON	149	10/31/22
HOUSTON	THE METHODIST HOSPITAL	L00457	HOUSTON	216	10/21/22
JEWETT	NUCOR CORPORATION	L02504	JEWETT	27	10/17/22
LONGVIEW	SYNTHOMER ADHESIVE TECHNOLOGIES LLC	L07166	LONGVIEW	01	10/24/22
MIDLAND	EUROFINS ENVIRONMENT TESTING SOUTH CENTRAL LLC DBA EUROFINS XENCO LLC	L05499	MIDLAND	17	10/18/22
PORT LAVACA	SEADRIFT COKE LP	L03432	PORT LAVACA	33	10/19/22
SAN ANTONIO	UROLOGY SAN ANTONIO PA	L06047	SAN ANTONIO	06	10/17/22
TEXAS CITY	BLANCHARD REFINING COMPANY LLC	L06526	TEXAS CITY	27	10/24/22
THE WOODLANDS	BAYLOR ST LUKES MEDICAL GROUP	L06875	THE WOODLANDS	06	10/19/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

THE WOODLANDS	METHODIST HEALTH CENTER DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L06861	THE WOODLANDS	14	10/19/22
THE WOODLANDS	MILLENNIUM PHYSICIANS ASSOC PLLC	L05901	THE WOODLANDS	15	10/26/22
THROUGHOUT TX	ECM INTERNATIONAL INC	L06987	EL PASO	07	10/18/22
THROUGHOUT TX	NEXTIER COMPLETION SOLUTIONS INC	L06712	HOUSTON	22	10/25/22
THROUGHOUT TX	PROTECT LLC	L07110	MIDLAND	04	10/18/22
THROUGHOUT TX	SCHNABEL ENGINEERING LLC	L07160	WAXAHACHIE	01	10/20/22
WACO	BAYLOR UNIVERSITY	L00343	WACO	51	10/21/22

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE MEMORIAL CAMPUS	L02353	EL PASO	154	10/28/22
HOUSTON	TECHNICAL INDUSTRIES INC	L05705	HOUSTON	05	10/18/22
PLANO	HEALTHTEXAS PROVIDER NETWORK	L06494	PLANO	08	10/19/22

RENEWAL OF LICENSES ISSUED: (continued)

THROUGHOUT TX	ESCOT NDE INC	L05002	CORPUS CHRISTI	37	10/25/22
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L04944	HARLINGEN	15	10/28/22

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
THROUGHOUT TX	TESTMASTERS INC	L03651	HOUSTON	37	10/27/22
WHITE OAK	WREN OILFIELD SERVICES INCORPORATED	L04690	WHITE OAK	13	10/24/22

TRD-202205069
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: December 16, 2022

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Licensing Actions for Radioactive Materials

During the first half of November 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
SAN ANTONIO	SCHNITZLER CARDIOVASCULAR CONSULTANTS PLLC	L07167	SAN ANTONIO	00	11/01/22

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
ALVIN	ASCEND PERFORMANCE MATERIALS TEXAS INC	L06630	ALVIN	11	11/07/22
AUSTIN	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	117	11/09/22
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS SOUTH AUSTIN MEDICAL CENTER	L03273	AUSTIN	127	11/08/22
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	243	11/09/22
CORPUS CHRISTI	CHRISTUS SPOHN HEALTH SYSTEM CORPORATION DBA CHRISTUS SPOHN HOSPITAL CORPUS CHRISTI – SHORELINE & SOUTH	L02495	CORPUS CHRISTI	144	11/08/22
DALLAS	PETNET SOLUTIONS INC	L05193	DALLAS	63	11/01/22
DEER PARK	EQUISTAR CHEMICALS LP	L00204	DEER PARK	78	11/08/22
EL PASO	BHS PHYSICIANS NETWORK INC DBA EL PASO HEART CENTER	L06893	EL PASO	07	11/07/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE SIERRA CAMPUS	L04758	EL PASO	37	11/01/22
HARLINGEN	TEXAS ONCOLOGY PA DBA SOUTH TEXAS CANCER CENTER HARLINGEN	L00154	HARLINGEN	55	11/08/22
HOUSTON	SPECTRACELL LABORATORIES INC	L04617	HOUSTON	21	11/07/22
NACOGDOCHES	SHARED MEDICAL SERVICES INC	L06142	NACOGDOCHES	41	11/01/22
SAN ANTONIO	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO	L01279	SAN ANTONIO	178	11/01/22
SAN ANTONIO	SOUTH TEXAS RADIOLOGY IMAGING CENTERS	L00325	SAN ANTONIO	260	11/08/22
THROUGHOUT TX	ECOSERV PERMIAN LLC	L07020	BIG SPRING	05	11/10/22
THROUGHOUT TX	FUGRO CONSULTANTS INC	L03461	GRAND PRAIRIE	38	11/07/22
THROUGHOUT TX	TERRACON CONSULTANTS INC	L05268	HOUSTON	71	11/09/22
THROUGHOUT TX	PRIME NDT SERVICES INC	L07122	KATY	02	11/09/22
THROUGHOUT TX	PRO-SURVE TECHNICAL SERVICES LLC	L06905	LEAGUE CITY	05	11/08/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

THROUGHOUT TX	SKG ENGINEERING LLC	L05918	SAN ANGELO	08	11/07/22
THROUGHOUT TX	SCI ENGINEERING INC	L06961	SELMA	03	11/07/22

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
PORT ARTHUR	SCIENCE ENGINEERING LTD	L04677	PORT ARTHUR	10	11/08/22
THROUGHOUT TX	GEOTEL ENGINEERING INC	L05674	CARROLLTON	11	11/14/22

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
HOUSTON	WILLOWBROOK CARDIOVASCULAR ASSOCIATES PA	L05090	HOUSTON	12	11/01/22
TYLER	TEXAS ONCOLOGY PA	L04788	TYLER	38	11/08/22

TRD-202205070
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: December 16, 2022

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Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking--Data Request Reevaluation (Texas Institutions of Higher Education)

Texas Education Code (TEC) Section 51.406 directs the Texas Higher Education Coordinating Board ("THECB" or "Board") to reevaluate its rules and policies to ensure the need for the data requests it imposes on institutions of higher education and to consult with the institutions to identify any unnecessary data request(s) that are appropriate for removal from Board Rules. The THECB intends to engage in negotiated rulemaking in accordance with the provisions of TEC 61.0331 which requires the THECB to employ the negotiated rulemaking process when adopting a policy, procedure, or rule relating to the reevaluation of data requests. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas institutions of higher education so-

liciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their system/institution.

From this effort, 38 individuals responded (out of approximately 188 affected entities) and expressed an interest to participate or nominated a representative from their system/institution to participate on the negotiated rulemaking committee for data request reevaluation. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed data request reevaluation.

The following is a list of the stakeholders who are significantly affected by this reevaluation and will be represented on the negotiated rulemaking committee for data request reevaluation:

1. Public community colleges;

2. Public health-related institutions;

3. Public State colleges;

4. Public Technical colleges;

5. Public universities;

6. Independent colleges and universities; and

7. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 24 individuals to the negotiated rulemaking committee for data request reevaluation to represent affected parties and the agency:

Public Community Colleges

Kelly Steelman, Director, Financial Aid, Amarillo College

David Malone, Director, Business Intelligence and Data Warehousing, Collin County Community College

Staci Martin, Vice President, Student Services, Kilgore College

Cesar Vela, Vice President, Finance and Administration, Laredo College

Cortni Haralson, Senior Manager, Texas State Reporting, Lone Star College

Lindy Matthews, Vice President, Administrative Services, Ranger College

Carin Hutchins, Associate Vice Chancellor, Finance, San Jacinto Community College

Brad Beauchamp, Director, Institutional Planning, Assessment and Effectiveness, Vernon College

Public Health-Related Institutions

Christiane Herber-Valdez, Assistant Vice President, Academic Affairs, Texas Tech University Health Sciences Center-El Paso (Texas Tech University System)

John C. McKee, Vice President, Interprofessional Education, Institutional Effectiveness, and the Health Education Center, ad interim; Associate Vice President, Institutional Effectiveness, The University of Texas Medical Branch at Galveston (The University of Texas System)

Public State Colleges

Petra Uzoruo, Coordinator, Institutional Research, Lamar State College-Port Arthur (Texas State University System)

Public Universities

Erin Mulligan-Nguyen, Associate Vice President, Planning, Analytics, Institutional Research and Strategic Initiatives, Texas A&M University-Corpus Christi (Texas A&M University System)

Jarvis Hampton, Assistant Vice President, Institutional Research and Effectiveness, West Texas A&M University (Texas A&M University System)

Raijanel Crockem, Associate Vice President, Institutional Assessment, Planning and Effectiveness, Texas Southern University

Brandon Hennington, Chief Data Management Officer, Texas Tech University (Texas Tech University System)

Kyle Boudreaux, Institutional Research Officer, Lamar University (Texas State University System)

Tami Rice, Director, System Data and Analysis, Texas State University System

Carol Tucker, Director, Institutional Research, University of Houston-Downtown (University of Houston System)

Jason F. Simon, Associate Vice President, Data, Analytics, and Institutional Research, University of North Texas (University of North Texas System)

Steve Wilkerson, Associate Vice Provost, Institutional Research and Analysis; Chief Analytic Officer, The University of Texas at San Antonio (The University of Texas System)

Susan Brown, Assistant Vice President, Strategic Analysis and Institutional Reporting, The University of Texas Rio Grande Valley (The University of Texas System)

Independent Colleges and Universities

Kathleen Morley, Assistant Vice Provost, Baylor University

Glenn James, Vice Provost, University of the Incarnate Word

Texas Higher Education Coordinating Board

Kara Larkan-Skinner, Assistant Commissioner, Data Management and Research

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;

2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

3. Name and contact information of the person being nominated for membership; and

4. Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee. Comments and applications for membership on the committee must be submitted by January 8, 2023, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202205140

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: December 20, 2022

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Texas Department of Housing and Community Affairs

Correction of Error

The Texas Department of Housing and Community Affairs (the Department) adopted new 10 TAC §11.9 in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8531). Due to an error by the Department, the text for subsection (c)(6)(F) was published incorrectly. The text should read as follows:

(F) The Development Site is located entirely within a census tract that is located wholly within the perimeter formed by the outermost boundaries of an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded 10 or fewer years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply to Development Sites located entirely in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside; (5 points)

(i) The presence of unincorporated enclaves within the census tract will not make an Application ineligible for these points so long as the tract is wholly within the outer boundaries of an incorporated area.

(ii) The perimeter of incorporated area may be composed of boundaries from multiple municipalities so long as the boundaries, when taken as a whole, form a complete perimeter.

(iii) The Development Site may intersect the boundaries of multiple Places so long as each has a population of 100,000 or more.

(iv) To accommodate for mapping inaccuracies, for purposes of this scoring item only, any overlap of boundaries that is 300 or fewer feet, measured outward from the incorporated area boundary, will be disregarded when determining that a census tract is located within an incorporated area so long as the determination is in the Application's favor.

(v) Contiguous census tracts include those that touch at a point.

TRD-202205137
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 20, 2022

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Obsidian Pacific Insurance Company, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application to do business in the state of Texas for Pulsar Title Insurance Company, Inc., a foreign title company. The home office is in Baton Rouge, Louisiana.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202205154
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: December 21, 2022

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Texas Lottery Commission

Scratch Ticket Game Number 2468 "VIP CLUB"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2468 is "VIP CLUB". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2468 shall be $30.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2468.

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, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, $30.00, $50.00, $75.00, $100, $150, $200, $300, $500, $3,000, $30,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2468 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
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	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$30.00	TRTY$

$50.00	FFTY$
$75.00	SVFV$
$100	ONHN
$150	ONFF
$200	TOHN
$300	THHN
$500	FVHN
$3,000	THTH
$30,000	30TH
$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2468), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2468-0000001-001.

H. Pack - A Pack of the "VIP CLUB" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "VIP CLUB" Scratch Ticket Game No. 2468.

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 "VIP CLUB" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-one (81) Play Symbols. BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. VIP CLUB PLAY INSTRUCTIONS: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. 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 eighty-one (81) 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 eighty-one (81) 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 eighty-one (81) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-one (81) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-seven (37) times.

D. GENERAL: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

E. GENERAL: The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in either of the two (2) BONUS play areas.

F. BONUS: A Ticket can win up to one (1) time in each of the two (2) BONUS play areas.

G. BONUS: A Ticket will not have matching non-winning Prize Symbols across the two (2) BONUS play areas.

H. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area.

I. BONUS: A non-winning BONUS play area will have two (2) different Prize Symbols.

J. VIP CLUB: A Ticket can win up to thirty (35) times in the main play area.

K. VIP CLUB: All non-winning YOUR NUMBERS Play Symbols will be different.

L. VIP CLUB: All WINNING NUMBERS Play Symbols will be different.

M. VIP CLUB: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

N. VIP CLUB: On all Tickets, a Prize Symbol will not appear more than six (6) times, except as required by the prize structure to create multiple wins.

O. VIP CLUB: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

P. VIP CLUB: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $30 and 30 and $50 and 50).

Q. VIP CLUB: On winning and Non-Winning Tickets, the top cash prizes of $3,000, $30,000 and $1,000,000 will each appear at least once, with respect to other parameters, play action or prize structure.

R. VIP CLUB: The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

S. VIP CLUB: The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

T. VIP CLUB: The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

U. VIP CLUB: The "2X" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

V. VIP CLUB: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

W. VIP CLUB: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

X. VIP CLUB: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

Y. VIP CLUB: The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

Z. VIP CLUB: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

AA. VIP CLUB: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

BB. VIP CLUB: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

CC. VIP CLUB: The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

DD. VIP CLUB: The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols can only appear together on the same winning Ticket, as indicated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "VIP CLUB" Scratch Ticket Game prize of $50.00, $75.00, $100, $150, $200, $300 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $75.00, $100, $150, $200, $300 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 "VIP CLUB" Scratch Ticket Game prize of $3,000, $30,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VIP CLUB" 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 "VIP CLUB" 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 "VIP CLUB" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,400,000 Scratch Tickets in Scratch Ticket Game No. 2468. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2468 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	470,400	17.86
$75.00	336,000	25.00
$100	336,000	25.00
$150	235,200	35.71
$200	247,100	33.99
$300	42,000	200.00
$500	8,400	1,000.00
$3,000	250	33,600.00
$30,000	20	420,000.00
$1,000,000	4	2,100,000.00

*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 5.01. 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. 2468 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. 2468, 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-202205131
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 20, 2022

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Scratch Ticket Game Number 2497 "COOL CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2497 is "COOL CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2497 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2497.

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, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, STAR SYMBOL,

POT OF GOLD SYMBOL, HORSESHOE SYMBOL, CHERRY SYMBOL, HAT SYMBOL, COINS SYMBOL, CACTUS SYMBOL, RING SYMBOL, GRAPE SYMBOL, PEPPER SYMBOL, STRAWBERRY SYMBOL, BANANA SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2497 - 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	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
STAR SYMBOL	STAR
POT OF GOLD SYMBOL	PTGD
HORSESHOE SYMBOL	SHOE
CHERRY SYMBOL	CHRY
HAT SYMBOL	HAT
COINS SYMBOL	COINS
CACTUS SYMBOL	CACTUS
RING SYMBOL	RING
GRAPE SYMBOL	GRPE
PEPPER SYMBOL	PEPPER
STRAWBERRY SYMBOL	STBRY
BANANA SYMBOL	BANANA

$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2497), 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: 2497-0000001-001.

H. Pack - A Pack of the "COOL CASH" 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 "COOL CASH" Scratch Ticket Game No. 2497.

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 "COOL CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-eight (48) Play Symbols. BONUS: If a player reveals 2 matching symbols in the BONUS, the player wins the PRIZE. COOL CASH (KEY NUMBER MATCH): If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "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 forty-eight (48) 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-eight (48) 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-eight (48) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-eight (48) 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. COOL CASH (Key Number Match): No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

D. COOL CASH (Key Number Match): No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. COOL CASH (Key Number Match): No matching WINNING NUMBERS Play Symbols on a Ticket.

F. COOL CASH (Key Number Match): A non-winning Prize Symbol will never match a winning Prize Symbol.

G. COOL CASH (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. COOL CASH (Key Number Match): The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. COOL CASH (Key Number Match): The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "COOL CASH" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $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 $25.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COOL CASH" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COOL CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "COOL CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "COOL CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2497. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2497 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	731,600	9.68
$10.00	542,800	13.04
$20.00	94,400	75.00
$25.00	141,600	50.00
$50.00	94,400	75.00
$100	20,650	342.86
$500	3,422	2,068.97
$1,000	413	17,142.86
$5,000	10	708,000.00
$100,000	6	1,180,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.35. 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. 2497 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. 2497, 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-202205132
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 20, 2022

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 13, 2022, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Dish Wireless LLC for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline, Project Number 54475.

The Application: Dish Wireless LLC seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Dish Wireless LLC seeks an ETC designation for the purpose of providing Lifeline services to qualifying low-income Texas consumers under the Gen Mobile brand.

The proposed effective date is January 29, 2023, or 30 days after notice is published, whichever is later.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than January 17, 2023, 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. All comments should reference Project Number 54475.

TRD-202205061
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2022

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Notice of Intent to Implement a Minor Rate Change Under 16 Texas Administrative Code §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 15, 2022, to implement a minor rate change under 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Application of La Ward Telephone Exchange, Inc. for a Minor Rate Change Under 16 TAC §26.171, Tariff Control Number 54483.

The Application: On December 15, 2022, La Ward Telephone Exchange, Inc. filed an application with the Commission for approval to some of its non-recurring service charges. La Ward proposed the following increases in service charges for residential and business customers: Primary Service Order Charge (Per Line) from $25.00 to $40.00; Secondary Service Order Charge (Per Line) from $15.00 to $30.00; Central Office Charge (Per Line) from $15.00 to $20.00; Access Line Charge (Per Line) from $30.00 to $40.00; Premise Visit Charge (Per Customer from $40.00 to $80.00; Service Call - Telephone (Per Customer) from $30.00 to $100.00; Service Call - Internet (Per Customer) from $50.00 to $100.00; Jack Fee (Per Jack) from $7.00 to $15.00; and Returned Check Charge (Per Check) from $20.00 to $35.00. La Ward proposed an effective date of January 1, 2023. The revenue effect of implementing the minor rate change described in this application results in an increase to La Ward's regulated intrastate gross annual revenues by an estimated $9,476.00.

If the Commission receives a complaint(s) relating to this proposal signed by 5% or more of the affected customers to which this proposal applies by January 3, 2023, the application will be docketed. The 5% threshold is calculated using total number of affected customers as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by January 3, 2023. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 54483.

TRD-202205138
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: December 20, 2022

♦ ♦ ♦

Supreme Court of Texas

Final Approval of Amendments to the Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code

Supreme Court of Texas

Misc. Docket No. 22-9113

Final Approval of Amendments to the Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code

ORDERED that:

1. On September 6, 2022, in Misc. Dkt. No. 22-9077, the Court preliminarily approved amendments to the Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code, effective immediately, and invited public comment.

2. No comments were received, and no additional changes have been made. This Order gives final approval to the amendments set forth in Misc. Dkt. No. 22-9077.

3. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

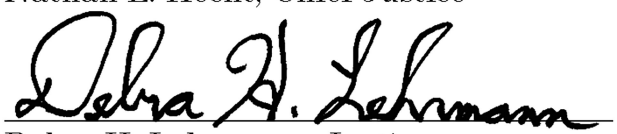
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

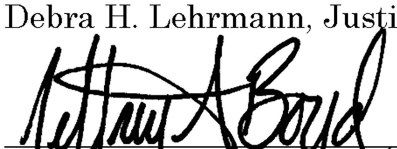
   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: December 19, 2022.

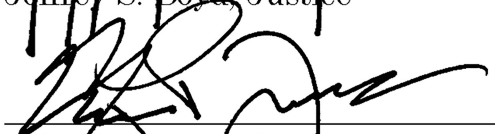
Nathan L. Hecht, Chief Justice



Debra H. Lehrmann, Justice

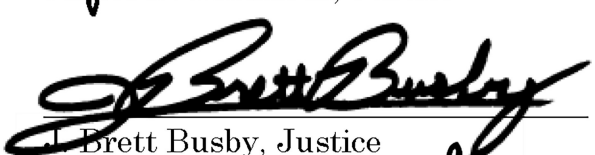


Jeffrey S. Boyd, Justice

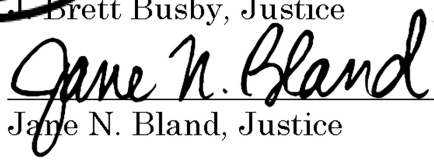


John P. Devine, Justice

James D. Blacklock, Justice

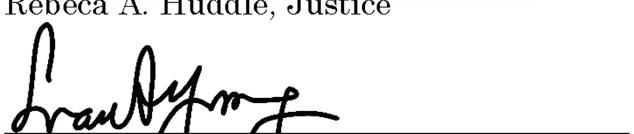


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TRD-202205128
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 19, 2022

♦ ♦ ♦

Order Amending Article XII of the State Bar Rules

Supreme Court of Texas

Misc. Docket No. 22-9114

Order Amending Article XII of the State Bar Rules

ORDERED that:

1. Article XII of the State Bar Rules is amended as set forth in this Order.

2. The amendments are effective immediately.

3. The Clerk is directed to:

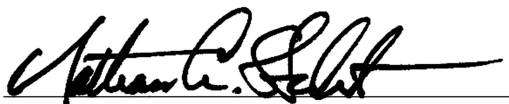
   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

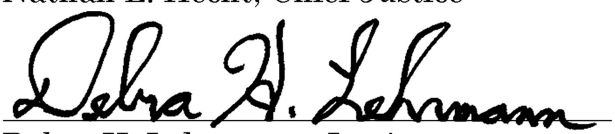
   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

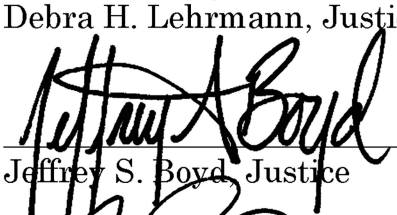
Dated: December 19, 2022.



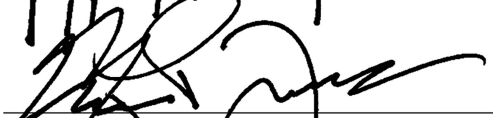
Nathan L. Hecht, Chief Justice



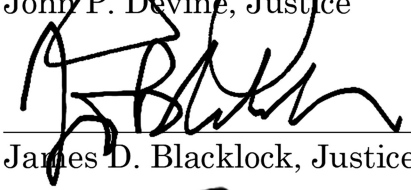
Debra H. Lehrmann, Justice



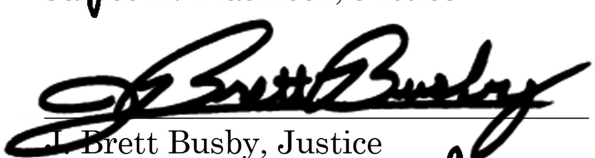
Jeffrey S. Boyd, Justice



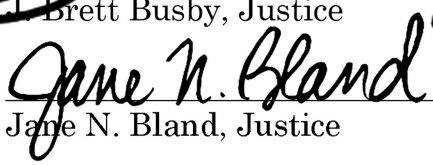
John P. Devine, Justice



James D. Blacklock, Justice

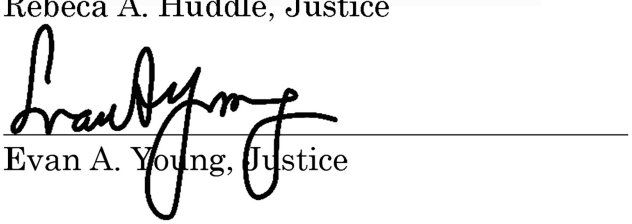


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

ARTICLE XII
TEXAS MINIMUM CONTINUING LEGAL EDUCATION

***

Section 11. Exemption of Certain Judges and Judicial Officers

~~Judges subject to Supreme Court Order for Judicial Education dated August 21, 1985, Supreme Court Order for Judicial Education for Retired or Former District Judges dated July 2, 1986, and federal judicial officers, shall be~~The following are exempt from these MCLE requirements~~.~~:

- judges, including retired and former judges subject to assignment and justices of the peace, required to complete instruction under the Rules of Judicial Education, adopted by the Texas Court of Criminal Appeals;
- judicial officers, as defined in Rule 4(d) of the Rules of Judicial Education; and
- federal judges.

***

TRD-202205129
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 19, 2022

♦ ♦ ♦

Preliminary Approval of Amendments to Texas Rule of Appellate Procedure 34.5(a)

Supreme Court of Texas

Misc. Docket No. 22-9109

Preliminary Approval of Amendments to
Texas Rule of Appellate Procedure 34.5(a)

ORDERED that:

1. The Court invites public comments on proposed amendments to Texas Rule of Appellate Procedure 34.5(a).

2. Comments regarding the proposed amendments should be submitted in writing to rulescomments@txcourts.gov by April 2, 2023.

3. The Court will issue an order finalizing the rule after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the amendments to take effect on May 1, 2023.

4. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

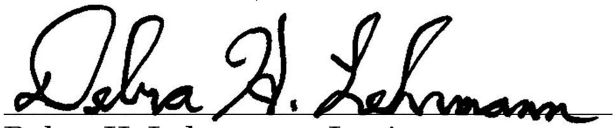
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

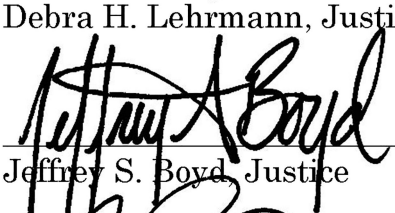
   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: December 13, 2022.

Nathan L. Hecht, Chief Justice

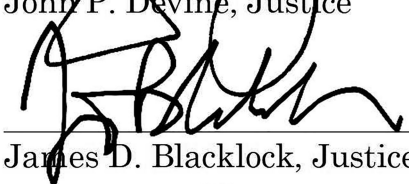


Debra H. Lehrmann, Justice

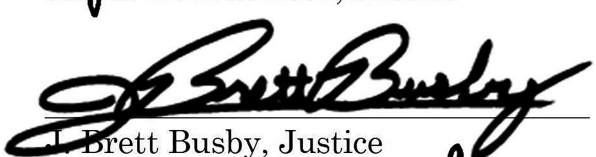


Jeffrey S. Boyd, Justice

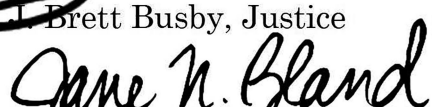
John P. Devine, Justice



James D. Blacklock, Justice

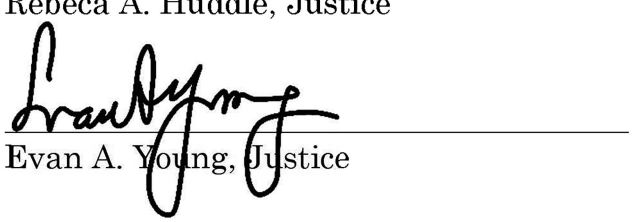


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 34. Appellate Record

***

34.5. Clerk's Record

(a) *Contents.* Unless the parties designate the filings in the appellate record by agreement under Rule 34.2, the record must include copies of the following:

(1) in civil cases, all pleadings on which the trial was held;

(2) in criminal cases, the indictment or information, any special plea or defense motion that was presented to the court and overruled, any written waiver, any written stipulation, and, in cases in which a plea of guilty or nolo contendere has been entered, any documents executed for the plea;

(3) the court's docket sheet;

(4) the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;

(5) the court's judgment or other order that is being appealed;

(6) any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;

(7) the notice of appeal;

(8) any formal bill of exception;

(9) any request for a reporter's record, including any statement of points or issues under Rule 34.6(c);

(10) any request for preparation of the clerk's record;

(11) in civil cases, a certified bill of costs, including the cost of preparing the clerk's record, showing credits for payments made;

(12) in criminal cases, the trial court's certification of the defendant's right of appeal under Rule 25.2; ~~and~~

(13) in civil cases, any supersedeas bond; and

(14) subject to (b), any filing that a party designates to have included in the record.

***

TRD-202205062
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 15, 2022

♦ ♦ ♦

Texas Veterans Commission

Correction of Error

The Texas Veterans Commission (commission) proposed amendments to 40 TAC §452.2 in the August 26, 2022 issue of the *Texas Register* (47 TexReg 5081). Due to an error by the Texas Register, the text for subsection (d)(2) was published incorrectly. The text should read as follows:

(d) (2) Committee member qualifications. The majority of members shall be current, former, or retired Veterans County Service Officers but may also include representatives from veterans' organizations or other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

Elsewhere in this issue of the *Texas Register,* the commission contemporaneously adopts the amendments.

TRD-202205103

♦ ♦ ♦

Texas Water Development Board

Notice for 2022 State Water Plan Amendment Adoption

The Texas Water Development Board (TWDB) will consider the adoption of an amendment to the 2022 State Water Plan at its next regularly scheduled Board meeting.

The amendment under consideration is proposed by the Region M Regional Water Planning Group. Specifically, Region M added three new recommended water management strategies and associated reservoir projects to capture tailwaters and precipitation runoff for beneficial use sponsored by the Hidalgo County Drainage District No. 1.

On September 30, 2022, the TWDB received the 2021 Region M Regional Water Plan amendment materials and request for approval. These materials were reviewed by Board staff and the major amendment to the regional water plan was approved by the Board on November 17, 2022.

Additionally, the Texas Water Development Board (TWDB) will conduct a public hearing in accordance with Texas Water Code §16.053(h) and 31 Texas Administrative Code §357.51(h) and §358.4(a) on January 5, 2023, to receive public comment on a proposed amendment to the 2022 State Water Plan, Water for Texas 2022. The hearing will begin at 1:30 p.m. in Room 172, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

Interested persons are encouraged to attend the public hearing to present comments concerning the proposed amendment. Those who cannot attend the hearings may provide written comments on or before January 5, 2023, to Mr. Ashley Harden, General Counsel, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or by email to PUBLIC-COMMENT@twdb.texas.gov. The TWDB will receive public comment on the proposed amendment until close of business at 5:00 p.m. on January 5, 2023. A copy of the proposed amendment is available on the TWDB's web site at http://www.twdb.texas.gov/waterplanning/swp/2022/index.asp.

TRD-202205071
Ashley Harden
General Counsel
Texas Water Development Board
Filed: December 16, 2022

♦ ♦ ♦


TEXAS

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)*

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Website: www.lexisnexis.com/printcdsc

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