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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §8.11

The Texas Ethics Commission (the Commission) proposes an amendment to a Texas Ethics Commission rule in Chapter 8. Specifically, the Commission proposes amended §8.11, regarding Review and Processing of a Request.

Historically, the Commission has released drafts in advance of Commission meetings to provide the public with an opportunity to prepare comments or objections. Requestors will sometimes seek to withdraw their request if they expect to get an answer they don't like. The proposed rule amendment would permit requestors to withdraw their requests up until it is placed on a public agenda. This would allow the Commission to release the drafts ahead of time while preventing requestors from backing out of the process after seeing the draft.

The Commission has not released early drafts of its opinions for the last two meetings. A member of the regulated community has indicated that he would likely seek a legislative change if the Commission does not reverse course. The purpose of the proposed rule is to resolve the regulated community's concerns, allow for maximum disclosure, but also prevent bad actors from abusing the process.

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

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

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; and will neither positively nor adversely affect this state's economy.

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

The amended rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amended rule affects Subchapter D of Chapter 571 of the Government Code.

§8.11. Review and Processing of a Request.

(a) Upon receipt of a written request for an advisory opinion, the executive director shall determine whether the request:

(1) pertains to the application of a law specified under §8.3 of this chapter;

(2) meets the standing requirements of §8.5 of this chapter;

(3) meets the form requirements of §8.7 of this chapter; and

(4) cannot be answered by written response under §8.17 of this chapter by reference to the plain language of a statute, commission rule, or advisory opinion.

(b) If the executive director determines that a request for an opinion meets the requirements of this chapter as set forth in subsections (a)(1) - (3) of this section and that the request cannot be answered by written response under §8.17 of this chapter, the executive director shall assign an AOR number to the request. The executive director shall notify the person making the request of the AOR number and of the proposed wording of the question to be answered by the commission.

(c) If the executive director determines that a request for an opinion does not meet the requirements of this chapter as set forth in subsections (a)(1) - (3) of this section or that the request can be answered by written response under §8.17 of this chapter, the executive director shall notify the person making the request of the reason the person making the request is not entitled to an advisory opinion in response to the request.

(d) A person who requests an opinion may withdraw the request prior to its inclusion on a meeting agenda filed by the Commission pursuant to the Open Meetings Law. Once a request is included on such an agenda, it may not be withdrawn by the requestor.

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 August 10, 2022.

TRD-202202973
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

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

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

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in the statutes listed in Figures 1 through 4 of §18.31 are also duplicated in numerous Commission rules, and therefore those rules must be similarly adjusted so they are consistent; amendments to these rules have been submitted concurrently with this proposal.

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

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

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

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

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

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

§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:
Figure 1: 1 TAC §18.31(a)
[~~Figure 1:~~ ~~1 TAC §18.31(a)~~]
Figure 2: 1 TAC §18.31(a)
[~~Figure 2:~~ ~~1 TAC §18.31(a)~~]
Figure 3: 1 TAC §18.31(a)
[~~Figure 3:~~ ~~1 TAC §18.31(a)~~]
Figure 4: 1 TAC §18.31(a)
[~~Figure 4:~~ ~~1 TAC §18.31(a)~~]

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

(c) The effective date of this rule is January 1, 2023 [~~2022~~].

(d) In this section:

(1) "CEC" means county executive committee;

(2) "DCE" means direct campaign expenditure-only filer;

(3) "GPAC" means general-purpose political committee;

(4) "MPAC" means monthly-filing general-purpose political committee;

(5) "PAC" means political committee;

(6) "PFS" means personal financial statement;

(7) "SPAC" means specific-purpose political committee; and

(8) "TA" means treasurer appointment.

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 August 10, 2022.

TRD-202202981

J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 20, Texas Administrative Code (TAC). Specifically, the Commission proposes amendments to §20.62, regarding Reporting Staff Reimbursement, and §20.65, regarding Reporting No Activity; §20.217, regarding Modified Reporting, §20.219, regarding Content of Candidate's Sworn Report of Contributions and Expenditures, §20.220, regarding Additional Disclosure for the Texas Comptroller of Public Accounts, and §20.221, regarding Special Pre-Election Report by Certain Candidates; §20.275, regarding Exception from Filing Requirement for Certain Local Officeholders, and §20.279, regarding Contents of Officeholder's Sworn Report of Contributions and Expenditures, §20.301, regarding Thresholds for Campaign Treasurer Appointment, §20.303, regarding Appointment of Campaign Treasurer, §20.313, regarding Converting to a General-Purpose Committee, §20.329, regarding Modified Reporting, §20.331, regarding Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures, and §20.333, regarding Special Pre-Election Report by Certain Specific-Purpose Committees; §20.401, regarding Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee, §20.405, regarding Campaign Treasurer Appointment for a General-Purpose Committee, §20.431, regarding Monthly Reporting, §20.433, regarding Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures, §20.434, regarding Alternate Reporting Requirements for General-Purpose Committees, and §20.435, regarding Special Pre-Election Reports by Certain General-Purpose Committees; §20.553, regarding County Executive Committee Accepting Contributions or Making Expenditures Under Certain Amount, and §20.555, regarding County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount.

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

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

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

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

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

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

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.62, §20.65

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

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

§20.62. Reporting Staff Reimbursement.

(a) Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed $6,910 [~~$6,450~~] during the reporting period may be reported as follows IF the reimbursement occurs during the same reporting period that the initial expenditure was made:

(1) the amount of political expenditures that in the aggregate exceed $200 [~~$190~~] and that are made during the reporting period, the full names [~~name~~] and addresses [~~address~~] of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; and

(2) included with the total amount or a specific listing of the political expenditures of $200 [$190] or less made during the reporting period.

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

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

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

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

§20.65. Reporting No Activity.

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

(b) This general rule does not apply to:

(1) special pre-election reports;

(2) special session reports; or

(3) a local officeholder who does not have a campaign treasurer appointment on file and who does not accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures during the reporting period.

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

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202975
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §§20.217, 20.219 - 20.221

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute; and Texas Government Code §2155.003, which requires the Commission to adopt rules to implement that section.

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

§20.217. Modified Reporting.

(a) An opposed candidate who does not intend to accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures (excluding filing fees) in connection with any election in an election cycle may choose to file under the modified schedule.

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

(c) To select modified filing, a candidate must file a declaration of intent not to accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the candidate understands that if either one of those limits is exceeded, the candidate will be required to file pre-election reports and, if necessary, a runoff report.

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

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

(f) If an opposed candidate exceeds either of the $1,010 [$940] limits, the candidate must file reports under §20.213 of this title (relating to Pre-election Reports) and §20.215 of this title (relating to Runoff Report).

(g) If an opposed candidate exceeds either of the $1,010 [$940] limits after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise, the period begins on the first day after the period covered by the last report required by this subchapter (other than a special pre-election report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the day the candidate exceeded one of the limits for modified reporting.

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

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

(1) the candidate's full name;

(2) the candidate's address;

(3) the office sought by the candidate, if known;

(4) the identity and date of the election for which the report is filed, if known;

(5) the campaign treasurer's name;

(6) the campaign treasurer's telephone number;

(7) the campaign treasurer's residence or business street address;

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

(A) the committee's full name;

(B) the committee's address;

(C) identification of the political committee as a general-purpose or a specific-purpose committee;

(D) the full name of the committee's campaign treasurer; and

(E) the address of the committee's campaign treasurer;

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

(A) the full name of the business to which the expenditure was made;

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

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(10) for each person from whom the candidate accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than $100 [~~$90~~] in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than $100 [~~$90~~] in value:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(11) for each person from whom the candidate accepted a pledge or pledges to provide more than $100 [~~$90~~] in money or goods or services worth more than $100 [~~$90~~]:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge;

(D) the date each pledge was accepted; [~~and~~]

(E) a description of any goods or services pledged; and

(F) the total of all pledges accepted during the period for $100 [~~$90~~] and less from a person, except those reported under subparagraphs (A)-(E) of this paragraph;

(12) for each person making a loan or loans to the candidate for campaign purposes, if the total amount loaned by the person during the period is more than $100 [~~$90~~]:

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

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(13) the total amount of loans accepted during the period for $100 [~~$90~~] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for a loan reported under paragraph (12) of this section;

(14) for political expenditures made during the reporting period that total more than $200 [~~$190~~] to a single payee, other than expenditures reported under paragraph (9) of this section:

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

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

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

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

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

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

(C) the date of the expenditure;

(D) the purpose of the expenditure;

(E) a declaration that the expenditure was made out of personal funds;

(F) a declaration that reimbursement from political contributions is intended; and

(G) the amount of the expenditure;

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

(A) the date of each expenditure;

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

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

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

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

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

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

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

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

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

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

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

(24) the following total amounts:

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

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $100 [~~$90~~] and less;

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

(D) the total amount or an itemized listing of the political expenditures of $200 [~~$190~~] and less; and

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

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

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

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

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

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

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

(1) for each vendor whose aggregate campaign contributions equal or exceed $650 [~~$620~~] during the reporting period, a notation that:

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

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

(2) for each political committee directly established, administered, or controlled by a vendor whose aggregate campaign contributions equal or exceed $650 [~~$620~~] during the reporting period, a notation that the contributor was a political committee directly established, administered, or controlled by a vendor during the reporting period or during the 12-month [~~12 month~~] period preceding the last day covered by the report.

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

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

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

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

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

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

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

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

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

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

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

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

(b) An opposed candidate for an office specified by §252.005(1), Election Code, who, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed $2,020 [~~$1,890~~] must file special pre-election reports.

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

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

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

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

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

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202976
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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

1 TAC §20.275, §20.279

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

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

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

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

(1) is required to file with an authority other than the commission;

(2) does not have a campaign treasurer appointment on file; and

(3) does not accept more than $1,010 [~~$940~~] in political contributions or make more than $1,010 [~~$940~~] in political expenditures during the reporting period.

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

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

(1) the officeholder's full name;

(2) the officeholder's address;

(3) the office held by the officeholder;

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

(A) the committee's full name;

(B) the committee's address;

(C) identification of the political committee as a general-purpose or a specific-purpose committee;

(D) the full name of the committee's campaign treasurer; and

(E) the address of the committee's campaign treasurer;

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

(A) the full name of the business to which the expenditure was made;

(B) the address of the business to which the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(6) for each person from whom the officeholder accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than $100 [~~$90~~] in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than $100 [~~$90~~] in value:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(7) for each person from whom the officeholder accepted a pledge or pledges to provide more than $100 [~~$90~~] in money or goods or services worth more than $100 [~~$90~~]:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged;

(8) the total of all pledges accepted during the period for $100 [~~$90~~] and less from a person, except those reported under paragraph (7) of this section;

(9) for each person making a loan or loans to the officeholder for officeholder purposes, if the total amount loaned by the person during the period is more than $100 [~~$90~~]:

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

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(10) the total amount of loans accepted during the period for $100 [~~$90~~] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (9) of this section;

(11) for political expenditures made during the reporting period that total more than $200 [~~$190~~] to a single payee, other than expenditures reported under paragraph (5) of this section:

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

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

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

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

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

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

(C) the date of each expenditure;

(D) the purpose of the expenditure;

(E) a declaration that the expenditure was made from personal funds;

(F) a declaration that reimbursement from political contributions is intended; and

(G) the amount of the expenditure;

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

(A) the date of each expenditure;

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

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

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

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

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

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

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

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

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

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

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

(21) the following total amounts:

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

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $100 [~~$90~~] and less;

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

(D) the total amount or an itemized listing of the political expenditures of $200 [$190] and less; and

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

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

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202977
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

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

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

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

§20.301. Thresholds for Campaign Treasurer Appointment.

(a) A specific-purpose committee may not accept political contributions exceeding $980 [$920] and may not make or authorize political expenditures exceeding $980 [$920] without filing a campaign treasurer appointment with the appropriate filing authority.

(b) A specific-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding $980 [$920] to support or oppose a candidate in a primary or general election for an office listed below unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day:

(1) a statewide office;

(2) a seat in the state legislature;

(3) a seat on the State Board of Education;

(4) a multi-county district office; or

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

§20.303. Appointment of Campaign Treasurer.

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

(b) After a specific-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded $980 [$920] in political contributions or expenditures.

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

§20.313. Converting to a General-Purpose Committee.

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

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

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

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

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

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

(e) The notice required under subsection (b) of this section is in addition to the requirement that the new general-purpose committee file a campaign treasurer appointment with the commission before it exceeds $980 [$920] in political expenditures or $980 [$920] in political contributions as a general-purpose committee.

§20.329. Modified Reporting.

(a) A specific-purpose committee that would otherwise be required to file pre-election reports and a runoff report, if necessary, may choose to file under the modified schedule if the committee does not intend to accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures (excluding filing fees) in connection with any election in an election cycle.

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

(c) To select modified filing, a specific-purpose committee must file a declaration of the committee's intent not to accept more than $1,010 [$940] in political contributions or make more than $1,010 [$940] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report.

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

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

(f) Except as provided by subsection (g) of this section, a specific-purpose committee's campaign treasurer must file pre-election reports and, if necessary, a runoff report under the schedule set out in §20.325 of this title (relating to Pre-election Reports) and §20.327 of this title (relating to Runoff Report) if the committee exceeds either of the $1,010 [~~$940~~] limits for modified reporting.

(g) If a specific-purpose committee exceeds either of the $1,010 [~~$940~~] limits for modified reporting after the 30th day before the election, the committee's campaign treasurer must file a report not later than 48 hours after exceeding the limit.

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

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

(h) A specific-purpose committee that exceeds either of the $1,010 [~~$940~~] limits for modified reporting after the 30th day before the election and on or before the 10th day before the election must file a report under §20.325(f) of this title [~~(relating to Pre-Election Reports)~~], in addition to any required special pre-election reports.

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

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

(1) the full name of the specific-purpose committee;

(2) the address of the specific-purpose committee;

(3) the full name of the specific-purpose committee's campaign treasurer;

(4) the residence or business street address of the specific-purpose committee's campaign treasurer;

(5) the committee campaign treasurer's telephone number;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) for each candidate supported or opposed by the specific-purpose committee:

(A) the full name of the candidate;

(B) the office sought by the candidate; and

(C) an indication of whether the committee supports or opposes the candidate;

(8) for each officeholder assisted by the specific-purpose committee:

(A) the full name of the officeholder;

(B) the office held by the officeholder; and

(C) an indication of whether the committee supports or opposes the officeholder;

(9) for each measure supported or opposed by the specific-purpose committee:

(A) a description of the measure; and

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

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

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

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

(D) the date the expenditure was returned to the specific-purpose committee;

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

(A) the full name of the business to which the expenditure was made;

(B) the address of the business to which the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

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

(A) the date each contribution was accepted;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution;

(D) the amount of the contribution; and

(E) a description of any in-kind contribution;

(13) for each person from whom the specific-purpose committee accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than $100 [~~$90~~] in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than $100 [~~$90~~] in value:

(A) the full name of the person;

(B) the address of the person;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(14) for each person from whom the specific-purpose committee accepted a pledge or pledges to provide more than $100 [~~$90~~] in money or to provide goods or services worth more than $100 [~~$90~~]:

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

(B) the address of the person making a pledge;

(C) the amount of the pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged;

(15) the total of all pledges accepted during the period for $100 [$90] and less from a person, except those reported under paragraph (14) of this section;

(16) for each person making a loan or loans to the specific-purpose committee for campaign or officeholder purposes, if the total amount loaned by the person during the period is more than $100 [$90]:

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

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(17) the total amount of loans accepted during the period for $100 [$90] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (16) of this section;

(18) for political expenditures made during the reporting period that total more than $200 [$190] to a single payee:

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

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

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

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

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

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

(A) the date of each expenditure;

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

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

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

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

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

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

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

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

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

(27) the following total amounts:

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

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $100 [$90] and less;

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

(D) the total amount or an itemized listing of the political expenditures of $200 [$190] and less; and

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

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

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

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

(b) A campaign treasurer for a specific-purpose committee for supporting or opposing a candidate for an office specified by §252.005(1), Election Code, that, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed $2,020 [$1,890] must file special pre-election reports.

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

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

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

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

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

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202978
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL PURPOSE COMMITTEE

1 TAC §§20.401, 20.405, 20.431, 20.433 - 20.435

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

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

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

(a) A general-purpose committee may not accept political contributions exceeding $980 [~~$920~~] and may not make or authorize political expenditures exceeding $980 [~~$920~~] without filing a campaign treasurer appointment with the commission.

(b) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a general-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding $980 [~~$920~~] to support or oppose a candidate in a primary or general election for the following:

(1) a statewide office;

(2) a seat in the state legislature;

(3) a seat on the State Board of Education;

(4) a multi-county district office; or

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

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

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

(b) After a general-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded $980 [~~$920~~] in political contributions or expenditures.

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

§20.431. Monthly Reporting.

(a) A monthly report filed by a general-purpose committee shall include the information required by §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the threshold reporting amount of $100 [~~$90~~] set out in §20.433(11)-(16), and (20) of this title [~~(relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures)~~] does not apply to a general-purpose committee reporting monthly. For a general-purpose committee reporting monthly, the threshold reporting amount under §20.433(11)-(16) and (20) of this title is $20, except as provided by §20.434 of this title (relating to Alternate Reporting Requirements for Certain General-Purpose Committees).

(b) A monthly report is due not later than the fifth day of the month following the end of the period covered by the report. A monthly report covering the month preceding an election in which the committee is involved must be received by the authority with whom the report is required to be filed no later than the fifth day of the month following the end of the period covered by the report.

(c) Except for the first monthly report filed, a monthly report covers a period that begins on the 26th day of one month and ends on the 25th day of the next month.

(d) The beginning day for the first monthly report filed by a general-purpose committee shall be as follows.

(1) For a general-purpose committee that has been filing on the regular schedule and chooses monthly filing between January 1 and January 15 of a particular year, the first report will cover a period that begins on January 1 of that year.

(2) For a general-purpose committee that elected to file monthly at the time it filed its campaign treasurer appointment, the period covered by the first monthly report depends on the day of the month that the campaign treasurer was appointed.

(A) If the general-purpose committee filed its campaign treasurer appointment before the 25th of the month, the first report will cover a period that begins on the day the appointment was filed and ends on the 25th day of the same month.

(B) If the general-purpose committee filed its campaign treasurer appointment on or after the 25th of the month, the first report will cover the period that begins on the day the appointment is filed and ends on the 25th day of the next month.

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

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

(1) the full name of the general-purpose committee;

(2) the address of the general-purpose committee;

(3) the full name of the general-purpose committee's campaign treasurer;

(4) the residence or business street address of the general-purpose committee's campaign treasurer;

(5) the committee campaign treasurer's telephone number;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by the general-purpose committee and an indication of whether the general-purpose committee supports or opposes each listed candidate, measure, or classification by party of candidates;

(8) the full name of each identified officeholder or classification by party of officeholders assisted by the general-purpose committee;

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

(A) the date each contribution was accepted;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution;

(D) the amount of the contribution; and

(E) a description of any in-kind contribution;

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

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

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

(D) the date the expenditure was returned to the general-purpose committee;

(11) for each person from whom the general-purpose committee accepted a political contribution other than a pledge or a loan of more than $100 [~~$90~~] in value, or political contributions other than pledges or loans that total more than $100 [~~$90~~] in value (or more than $20 for a general-purpose committee reporting monthly):

(A) the date each contribution was accepted;

(B) the full name of the person making the contribution;

(C) the address of the person making the contribution;

(D) the principal occupation of the person making the contribution;

(E) the amount of the contribution; and

(F) a description of any in-kind contribution;

(12) for each person from whom the general-purpose committee accepted a pledge or pledges to provide more than $100 [~~$90~~] in money or to provide goods or services worth more than $100 [~~$90~~] (more than $20 for a general-purpose committee reporting monthly):

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the principal occupation of the person making the pledge;

(D) the amount of each pledge;

(E) the date each pledge was accepted; and

(F) a description of any goods or services pledged;

(13) the total of all pledges accepted during the period for $100 [~~$90~~] and less from a person, except for those reported under paragraph (12) of this subsection;

(14) for each person making a loan or loans to the general-purpose committee for campaign purposes, if the total amount loaned by the person during the period is more than $100 [~~$90~~] (more than $20 for a general-purpose committee reporting monthly):

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

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(15) the total amount of loans accepted during the period for $100 [~~$90~~] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for those reported under paragraph (14) of this section;

(16) for political expenditures made during the reporting period that total more than $200 [~~$190~~] (more than $20 for a general-purpose committee reporting monthly) to a single payee:

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

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

(C) the date of the expenditure;

(D) the purpose of the expenditure;

(E) the amount of the expenditure; and

(F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

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

(A) the date of each expenditure;

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

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

(D) the purpose of the expenditure;

(E) the amount of the expenditure; and

(F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

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

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

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

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

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

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

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

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

(25) the following total amounts:

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

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of $100 [~~$90~~] and less ($20 and less for a general-purpose committee reporting monthly);

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

(D) the total amount or an itemized listing of the political expenditures of $200 [~~$190~~] and less ($20 and less for a general-purpose committee reporting monthly); and

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

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

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

(a) This section and Election Code §254.1541 apply only to a general-purpose committee with less than $29,300 [~~$27,380~~] in one or more accounts maintained by the committee in which political contributions are deposited, as of the last day of the preceding reporting period for which the committee was required to file a report.

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

(c) A report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.1541 [~~§254.154~~] apply shall include the information required by §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions of $200 [~~$190~~] instead of the threshold reporting amount of $100 [~~$90~~] set out in §20.433(11) [~~§20.433(a)(11)~~] and (25)(B) [~~(a)20(B)~~] of this title.

(d) A monthly report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.1541 [~~§254.154~~] apply shall include the information required by §20.433 of this title [~~(Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures)~~], except that the campaign treasurer may choose a threshold reporting amount for political contributions of $40 instead of the threshold reporting amount of $20 set out in §20.433(11) [~~§20.433(a)(11)~~] and (25)(B) [~~(a)20(B)~~] of this title.

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

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

(1) makes direct campaign expenditures supporting or opposing a single candidate that in the aggregate exceed $2,020 [~~$1,890~~] or a group of candidates that in the aggregate exceed $30,330 [~~$28,330~~] during the reporting period for special pre-election reports; or

(2) accepts political contributions from a person that in the aggregate exceed $6,910 [~~$6,450~~] during the reporting period for special pre-election reports.

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

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

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

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

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 August 10, 2022.

TRD-202202979
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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

1 TAC §20.553, §20.555

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

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

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

(a) A county executive committee accepting political contributions or making political expenditures totaling $36,630 [~~$34,220~~] or less in a calendar year is not required to:

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

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

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

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

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

(b) A county executive committee that accepts political contributions or that makes political expenditures that, in the aggregate, exceed $36,630 [~~$34,220~~] in a calendar year shall file:

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

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

(c) Contributions accepted from corporations and labor organizations under section 253.104 of the Election Code and reported under Subchapter H of this chapter (relating to Accepting and Reporting Contributions from Corporations and Labor Organizations) do not count against the $36,630 [~~$34,220~~] thresholds described in subsection (b) of this section.

(d) A county executive committee that filed a campaign treasurer appointment may file a final report, which will notify the commission that the county executive committee does not intend to file future reports unless it exceeds one of the $36,630 [~~$34,220~~] thresholds. The final report may be filed:

(1) beginning on January 1 and by the January 15 filing deadline if the committee has exceeded one of the $36,630 [~~$34,220~~] thresholds in the previous calendar year; or

(2) at any time if the committee has not exceeded one of the $36,630 [~~$34,220~~] thresholds in the calendar year.

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202980
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §§22.1, 22.6, 22.7

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 22. Specifically, the Commission proposes amendments to §22.1, regarding Certain Campaign Treasurer Appointments Required before Political Activity Begins, §22.6, regarding Reporting Direct Campaign Expenditures, and §22.7, regarding Contribution from Out-of-State Committee.

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

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These

new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

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

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

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

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

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

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

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

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

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

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

(b) A political committee may not accept political contributions exceeding $980 [~~$920~~] and may not make or authorize political expenditures exceeding $980 [~~$920~~] without filing a campaign treasurer appointment with the appropriate filing authority.

(c) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a political committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding $980 [~~$920~~] to support or oppose a candidate in a primary or general election for the following:

(1) a statewide office;

(2) a seat in the state legislature;

(3) a seat on the State Board of Education;

(4) a multi-county district office; or

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

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

§22.6. Reporting Direct Campaign Expenditures.

Section 254.261 of the Election Code applies to a person who, not acting in concert with another person, makes one or more direct campaign expenditures that exceed $150 [~~$140~~] in an election from the person's own property.

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

(a) For each reporting period during which a candidate, officeholder, or political committee accepts a contribution or contributions from an out-of-state political committee totaling more than $1,010 [~~$940~~], the candidate, officeholder, or political committee must comply with subsections (b) and (c) of this section.

(b) The candidate, officeholder, or political committee covered by subsection (a) of this section must first obtain from the out-of-state committee one of the following documents before accepting the contribution that causes the total received from the out-of-state committee to exceed $1,010 [~~$940~~] during the reporting period:

(1) a written statement, certified by an officer of the out-of-state political committee, listing the full name and address of each person who contributed more than $200 [~~$190~~] to the out-of-state political committee during the 12 months immediately preceding the date of the contribution; or

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

(c) The document obtained pursuant to subsection (b) of this section shall be included as part of the report that covers the reporting period in which the candidate, officeholder, or political committee accepted the contribution that caused the total accepted from the out-of-state committee to exceed $1,010 [~~$940~~].

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

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

(2) complies with subsection (b)(2) of this section before accepting the first contribution triggering subsection (a) of this section, may comply with subsection (c) of this section in successive reporting periods by submitting a copy of the certified document obtained before

accepting the first contribution triggering subsection (a) of this section, rather than by obtaining and submitting an original certified document for each reporting period, provided the document has not been amended since the last submission.

(e) A candidate, officeholder, or political committee that accepts a contribution or contributions totaling $1,010 [~~$940~~] or less from an out-of-state political committee shall include as part of the report covering the reporting period in which the contribution or contributions are accepted either:

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

(2) the following information:

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

(B) the address of the committee;

(C) the telephone number of the committee;

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

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

(i) the individual's full name;

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

(iii) the individual's telephone number.

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

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202982
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS
SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.41, §34.43

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

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

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

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

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

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

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

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

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

§34.41. Expenditure Threshold.

(a) A person must register under Government Code, §305.003(a)(1), if the person makes total expenditures of more than $880 [~~$820~~] in a calendar quarter, not including expenditures for the person's own travel, food, lodging, or membership dues, on activities described in Government Code §305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

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

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

§34.43. Compensation and Reimbursement Threshold.

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than $1,760 [~~$1,640~~] in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

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

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

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202983
J.R. Johnson
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.20, §20.22

The Texas Department of Agriculture (the Department) proposes amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 20, Subchapter C, §20.20, concerning Pest Management Zones, and §20.22, concerning Stalk Destruction Requirements.

These proposed amendments are in response to a request from Texas cotton producers to the Texas Boll Weevil Eradication Foundation's (Foundation) Board of Directors to consolidate and renumber certain pest management areas within pest management zones.

The Board forwarded this request to its Technical Advisory Committee (Committee) for further review. The Committee indicated these zones are currently in functionally eradicated or eradicated areas of Texas, and do not have a boll weevil presence. Accordingly, they no longer face pest control demands requiring destruction and planting dates specific to their areas, as currently reflected. The Committee also determined that, with the advent of new cotton varieties, combined with a decrease in the number of producers, consolidation of the areas within these zones would facilitate production more efficiently for those producers who operate across multiple zones.

The consolidation of areas necessitates changes to stalk destruction dates to achieve uniformity in the reorganized pest management zones. Dates were selected to reflect the latest stalk destruction dates in the areas being consolidated. In its review, the Committee also aligned the earliest planting date and end date for destruction requirements to reflect these changes.

Following the Committee's review, its Chairman, Dr. Tom Fuchs, presented the recommendations to the Board at its meeting on November 17, 2021. The Board agreed that these recommendations reflect industry demands and aim at aiding cotton producers in increasing the effectiveness of their efforts at producing pest-free cotton. The Board discussed these recommendations with the Department throughout the review process. The Department concluded that implementing these changes would not only aid producers but also increase the Department's efficiency at managing its hostable cotton program. The Department agreed to propose these changes following a formal request from the Board.

The proposed amendments to §20.20 combine the areas of Pest Management Zone 2 into a single Zone 2, renumber Pest Management Zone 6 to become Zone 5, combine the areas of Pest Management Zone 7 and renumber it to become Zone 6, combine the areas of Pest Management Zone 8 and renumber it to become Zone 7, renumber Pest Management Zone 9 to become Zone 8, and renumber Pest Management Zone 10 to become Zone 9.

The proposed amendments to §20.22 change references to Pest Management Zones 9 and 10 to Zones 8 and 9, respectively, to account for the proposed amendments to §20.20. The amendments also revise the table in §20.22(a)(3) to reflect the proposed amendments to the pest management zones in §20.20, and change earliest planting dates, destruction deadlines, and end dates for destruction requirements for particular zones.

Dr. Awinash Bhatkar, Coordinator for Biosecurity and Agriculture Resource Management, has determined that for the first five-

year period the proposed amendments are in effect, there will be no fiscal impact on state or local government as a result of the proposal.

Dr. Bhatkar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be greater uniformity an increase in the effectiveness of boll weevil and pink bollworm eradication efforts throughout the State.

Dr. Bhatkar has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.021. As a result of implementing the proposal, for the first five years the proposed rules are 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 a positive effect on the Texas economy, as the increase in the effectiveness of boll weevil and pink bollworm eradication efforts will be favorable to cotton production.

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

Comments on the proposed amendments may be submitted to 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.*

The amendments are proposed under §74.006 of the Texas Agriculture Code, which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program, and §74.004, which provides the Department with the authority to establish regulated areas, dates, and appropriate methods of destruction of cotton stalks, other cotton parts, and products of host plants for cotton pests.

Chapter 74 of the Texas Agriculture Code is affected by the proposal.

§20.20. Pest Management Zones.

(a) (No change.)

(b) Zones. Established zones include the following counties:

(1) (No change.)

(2) Zone 2[~~, Area (1)~~]. Aransas, Bee, Calhoun, Duval, Goliad, Jim Wells, Kleberg, LaSalle, Live Oak, McMullen, Nueces, Refugio, San Patricio, Victoria, [~~and~~] Webb, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.

[~~(3) Zone 2, Area (2). Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.~~]

[~~(4) Zone 2, Area (3). Aransas except for that part north of Copano Bay (including but not limited to Lamar and Blackjack peninsulas), San Patricio and south and east of U.S. Highway 59 in Bee and Live Oak.~~]

[~~(5) Zone 2, Area (4). Aransas north of Copano Bay (including but not limited to Lamar and Blackjack peninsulas), Calhoun, Goliad, LaSalle, McMullen, Refugio, Victoria and north and west of U.S. Highway 59 in Bee and Live Oak.~~]

(3) [~~(6)~~] Zone 3. Austin, Brazoria, Chambers, Colorado, Fayette, Fort Bend, Galveston, Gonzales, Harris, Jackson, Jefferson, Lavaca, Liberty, Matagorda, Orange, Waller, and Wharton.

(4) [~~(7)~~] Zone 4. Atascosa, Bexar, DeWitt, Dimmit, Frio, Karnes, Kinney, Maverick, Medina, Uvalde, Val Verde, Wilson, and Zavala.

(5) [~~(8)~~] Zone 5 [~~6~~]. Bastrop, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis, and Williamson.

(6) [~~(9)~~] Zone 6 [~~7, Area (1)~~]. Anderson, Angelina, Brazos, Burleson, Cherokee, Grimes, Hardin, Houston, Jasper, Leon, Madison, Montgomery, Nacogdoches, Newton, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, [~~and~~] Smith, Trinity, Tyler, Walker, and Washington.

[~~(10) Zone 7, Area (2). Brazos, Burleson, Grimes, Hardin, Jasper, Madison, Montgomery, Newton, Polk, Robertson, San Jacinto, Trinity, Tyler, Walker and Washington.~~]

(7) [~~(11)~~] Zone 7 [~~8 Area (1)~~]. Bell, Bosque, Coryell, Ellis, Falls, Freestone, Hamilton, Henderson, Hill, Hood, Johnson, Lampasas, Limestone, [~~and~~] McLennan, Navarro, and Somervell.

[~~(12) Zone 8 Area (2). Ellis, Henderson, Hood, Johnson, Navarro and Somervell.~~]

(8) [~~(13)~~] Zone 8 [~~9~~]. Pecos, Reeves, and Ward.

(9) [~~(14)~~] Zone 9 [~~10~~]. El Paso County and that portion of Hudspeth County bounded by Interstate Highway 10 on the north, the El Paso County line on the west, the Rio Grande River on the south, and a line from old Fort Quitman, north along Highway 34 to Interstate 10 on the east.

§20.22. Stalk Destruction Requirements.

(a) Deadline and methods. From the destruction deadline until the end date for destruction requirements, all cotton plants in a Pest Management Zone shall be non-hostable. Enforcement of destruction requirements begins on the day immediately following the destruction deadline date. Additional requirements for stalk destruction are as follows:

(1) Zone 8 [~~9~~]--All cotton plants shall be shredded.

(2) Zone 9 [~~10~~]--All cotton plants shall be shredded; also, the field shall be:

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

(3) The destruction deadlines and end date for destruction requirements for cotton plants in each Pest Management Zone are prescribed as follows:
Figure: 4 TAC §20.22(a)(3)
[~~Figure: 4 TAC §20.22(a)(3)~~]

(b) - (f) (No change.)

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

Filed with the Office of the Secretary of State on August 12, 2022.

TRD-202203031
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 936-9360

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.9

The Texas State Board of Plumbing Examiners (Board or TSBPE) proposes an amendment to the existing rule at 22 Texas Administrative Code (TAC), Chapter 363, §363.9, concerning examination and registration. The proposed change is referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The proposed rule implements a Board recommendation to allow the nationally known and recognized certification in medical gas piping installation from the American Society of Sanitation Engineering (ASSE) to expand educational opportunities to potential medical gas piping installation endorsees and lower unnecessary regulatory barriers. The certification in medical gas piping installation offered by ASSE has more rigorous training standards than TSBPE for medical gas piping installation training and is commonly recognized as the "gold standard" for national medical gas piping installation training. The rule allows the Board to recognize this training as an additional path to qualification for holding a medical gas piping installation endorsement.

SECTION BY SECTION SUMMARY

Section 363.9 allows the recognition of the eligibility credential of certification in medical gas piping installation by the ASSE for a Texas medical gas piping endorsement.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director for the Board (Executive Director), has determined that for the first five-year period the amended rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the amended rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFITS

The Executive Director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing or administering the amended rule will be to have fewer regulatory barriers to licensure and greater opportunity to expand the population of medical gas piping endorsees by allowing licensees to obtain a medical gas piping installation training by an additional training provider.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

The executive director has determined that for the first five years the amended rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the amended rule.

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

Given that the amended rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the amended rule is in effect, the Board has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the amended rule does not require an increase or decrease in fees paid to the agency; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand, limit, or repeal an existing regulation; (7) the amended rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the amended rule does not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the amended rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

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

The amended rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the amended rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the amended rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the amended rule may be submitted by mail to Patricia Latombe at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with

the subject line "Rule Amendment." All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Texas Occupations Code, which authorizes the Texas State Board of Plumbing Examiners to adopt rules as necessary to implement the Chapter.

No other statutes or rules are affected by the proposal.

§363.9. Medical Gas Piping Endorsement.

(a) To be eligible for a Medical Gas Piping Installation Endorsement an applicant must:

(1) hold a current Journeyman Plumber, Master Plumber or Plumbing Inspector License; and

(2) have successfully completed an [~~a Board~~-]approved training program in medical gas piping installation, which is based on the standards contained in the latest edition of the National Fire Protection Association 99 Health Care Facilities Code (NFPA 99), or demonstrate the successful completion of a national certification in medical gas piping installation by the American Society of Sanitation Engineering (ASSE).

(b) At a minimum, the training program required by subsection (a)(2) of this section shall:

(1) consist of at least twenty-four (24) hours dedicated to classroom presentation, shop demonstration and testing of the enrollee's comprehension of the course material;

(2) address the responsibilities of an endorsement-holder as outlined in the current edition of the NFPA 99, Plumbing License Law and Board Rules;

(3) address the proper installation and testing requirements for medical gas and vacuum piping systems, as outlined in the current edition of the NFPA 99; and

(4) include at least four (4) hours of shop demonstration covering the proper assembly, purging and brazing procedures for horizontal and vertical joints.

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 August 11, 2022.

TRD-202202996
Patricia Latombe
General Counsel
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 936-5216

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.33, 537.37, 537.43, 537.46 - 537.48, 537.51, 537.58, 537.59, 537.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-15; §537.28, Standard Contract Form TREC No. 20-16; §537.30, Standard Contract Form TREC No. 23-17; §537.31, Standard Contract Form TREC No. 24-17; §537.32, Standard Contract Form TREC No. 25-14; §537.33, Standard Contract Form TREC No. 26-7; §537.37, Standard Contract Form TREC No. 30-15; §537.43, Standard Contract Form TREC No. 36-9; §537.46, Standard Contract Form TREC No. 39-8; §537.47, Standard Contract Form TREC No. 40-9; §537.48, Standard Contract Form TREC No. 41-2; §537.51, Standard Contract Form TREC No. 44-2; §537.58, Standard Contract Form TREC No. 51-0; §537.59, Standard Contract Form TREC No. 52-0; and new rule §537.65, Standard Contract Form TREC No. 57-0, Notice to Prospective Buyer in Chapter 537, Professional Agreements and Standard Contracts.

The proposed amendments and new rules to Chapter 537 are made as a result of the Commission's quadrennial rule review. The proposed changes to the existing rules add the title of the form adopted by reference in each rule to the rule title and add clarifying language to specify which forms are for mandatory versus voluntary use by license holders. The new rules pair previously existing forms that were available for voluntary use by license holders with a rule to provide greater clarity about each form's purpose and use.

Each of the rules also include corresponding contract forms adopted by reference. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rule. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale).*

The term "Escrow Agent" is capitalized throughout the contract to reflect its status as a defined term.

Paragraph 3 is amended to add a definition of "cash portion of the sales price."

A new "required notices" section is added to Paragraph 6, which provides one location where MUD, PID, or other similar notices that have been given or are attached to the contract can be listed. The corresponding reference to the Commission's form "Addendum containing Notice of Obligation to Pay Improvement District Assessment" is removed from Paragraph 22.

Paragraph 7.F is revised to require that the seller: (i) provide the buyer with copies of documentation from the repair person that shows both the scope of work and payment for the work completed; and (ii) transfer, at seller's expense, any transferable warranties at closing.

Paragraph 7.H is amended to replace the term "residential service company" with the terminology used by the Texas Department of Licensing and Regulation, which as of September 1, 2021, regulates residential service companies.

Paragraph 9.B(3) is amended to add the transfer of any warranties to correspond with the change in Paragraph 7F. New paragraph 9.B(5) provides that private transfer fees will be the obligation of the seller, unless otherwise provided in this contract.

Paragraph 11 is amended to further clarify the intent of the paragraph by replacing the terms "factual statements" and "business details" with "informational items," which is now defined, and adding that real estate brokers cannot practice law and are prohibited from adding to, deleting, or modifying the contract unless drafted by a party to the contract or a party's attorney. Lines have also been inserted into the blank.

Paragraph 13 is amended to clarify what amounts will be prorated through the closing date.

Paragraph 18.B is amended to add that if no closing occurs, the escrow agent may require a written release of liability *before* releasing the earnest money.

Paragraph 21 is amended to add a line for a courtesy copy to another individual, like an agent.

In the Unimproved Property Contract, the Farm and Ranch Contract, the New Home Contract (Incomplete Construction), and the New Home Contract (Complete Construction), the Seller's Disclosures paragraph has been amended to: (i) add checkboxes to each disclosure item to indicate whether the seller is or is not aware; and (ii) add two additional disclosures relating to whether the property is located in a floodplain or if any tree located on the property has oak wilt.

The Farm and Ranch Contract contains the following additional proposed changes:

A notice is added that states the form is designed for use in sales of existing farms or ranches of any size, and that it's not for use in complex transactions.

Paragraph 2.A adds the term "Counties" to reflect the fact that farm and ranch properties could be located across two or more counties. Additionally, the phrase "including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships" is deleted from the paragraph.

Paragraph 2.B is amended to make the terms "house" and "garage" plural.

Paragraph 3.D is amended to alter the calculation of the sales price adjustment should the survey reveal a difference in acreage.

New paragraph 4.D is added to address surface leases and includes options regarding whether the seller has delivered copies of written leases or provided notice of oral leases to the buyer, similar to the existing natural resource lease paragraph. The corresponding language in Paragraph 6.F is also amended.

On page 10 of the Contract, the statement "Do not sign if there is a separate written agreement for payment of Brokers' fees" is being modified to make it more conspicuous.

The Residential Condominium Contract contains the following additional proposed changes:

Paragraph 2.A(1) is amended to add a reference to an exhibit.

Paragraph 2.B(2) and 2.C(2) are amended to clarify the timing related to termination and to add a reference to the applicable Property Code provision.

Paragraph 12.A(3) is amended to except prepaid regular periodic maintenance fees, assessments, or dues from the buyer's obligation to pay any and fees associated with the transfer of the property not to exceed a certain amount, and the seller pays the excess.

The Amendment to Contract is amended to add a notice to consult an attorney and to add a reference to Paragraph 7 of the contracts in Paragraph 2 of the Amendment dealing with repairs. The form is also amended to replace the parenthetical following Paragraph 9, Other Modifications, with a statement that real estate brokers and sales agents are prohibited from practicing law. Lines have also been inserted into the blank.

The Seller Financing Addendum contains the following amendments:

A notice encouraging consultation with an attorney and a financial professional and informing parties of the complicated nature of these transactions is added to the top of the form.

Paragraph B is amended to modify the time period within which the seller may terminate.

A new instructional parenthetical is added in Paragraph C. Additionally, the interest in modified to reflect a per annum interest rate.

Paragraph D.2(a) and (b) are amended to clarify the casualty insurance requirements and new paragraph D.2 is added to address casualty insurance.

Paragraph D.2(b) is further amended to add a requirement that the seller provide the buyer with an annual accounting of the escrow account, use escrow deposits to pay taxes and insurance premiums in a timely manner in certain circumstances, and hold the escrow deposit in a separate account. Language is also added to specify whether the escrow account will or will not be serviced by a third-party servicer at either the buyer's or seller's expense.

The Addendum for Property Subject to Mandatory Membership in a Property Owners Association is amended to except prepaid regular periodic maintenance fees, assessments, or dues from the buyer's obligation to pay any and fees associated with the transfer of the property not to exceed a certain amount, and the seller pays the excess. Language is also added to clarify that these fees should be prorated pursuant to Paragraph 13 of the Contract. Finally, the amended language adds that the paragraph does not apply to a fee that is not imposed by the Association, even if it is collected by the Association for the benefit of a third party.

The Third Party Financing Addendum is amended to add an "other financing" box in Paragraph 1. Paragraph 3 is amended to add that a note must be secured by vendor's and deed of trust liens only if required by the buyer's lender. Finally, the phrase "provided in relation to the closing of this sale" is struck from Paragraph 5.B to streamline the paragraph.

Both the Addendum Regarding Residential Leases and the Addendum Regarding Fixture Leases are amended to add a checkbox in Paragraph B.1 related to notice of oral leases. Additionally, the Addendum for Disclosure of Fixture Leases is amended to modify Paragraph A.1 to include checkboxes, in lieu of a blank line, so that the parties can specifically indicate what types of fixture leases will be assumed and assigned.

The Notice to Prospective Buyer form (which currently exists, but has not had a corresponding rule which adopts the form by refer-

ence) is amended to add a reference to the notice requirements regarding public improvement districts.

The Loan Assumption Addendum contains the following amendments:

-"Effective Date" and "Title Company" are capitalized throughout.

-Paragraph A is amended to add that the noteholder of the loan being assumed is authorized to receive a copy of the buyer's credit reports.

-Paragraph B is amended to modify the time period within which the seller may terminate.

-Paragraph C is amended to clarify that the buyer will assume in writing the following notes at closing, to remove the reference to $500 and instead insert a blank, and to add the following sentence: "Within 7 days after the Effective Date, Seller will deliver to Buyer copies of the note(s) to be assumed, the deed(s) of trust, and the most recent loan statement(s) from the lender."

-New paragraph H is added related to authorization to release information.

-A new due on sale notice is added.

The Addendum for Reservation of Oil, Gas, and Other Minerals is amended to replace the phrase "reserve and retain implied" with "waive" in Paragraph C. The term "current" is added to "contact information" in Paragraph D.

Abby Lee, Deputy General Counsel, 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 for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of adopting the sections as proposed will be improved clarity and greater transparency for members of the public and license holders.

For each year of the first five years the proposed amendments and new rules are in effect, the amendments 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; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code, or article is affected by the amendments and new rules.

§537.20. Standard Contract Form TREC No. 9-16[~~9-15~~], Unimproved Property Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-16[~~9-15~~] approved by the Commission in 2021 for mandatory use in the sale of unimproved property where the intended use is for one to four family residences.

§537.28. Standard Contract Form TREC No. 20-17[~~20-16~~], One to Four Family Residential Contract (Resale).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-17[~~20-16~~] approved by the Commission in 2021 for mandatory use in the resale of residential real estate.

§537.30. Standard Contract Form TREC No. 23-18[~~23-17~~], New Home Contract (Incomplete Construction).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-18[~~23-17~~] approved by the Commission in 2021 for mandatory use in the sale of a new home where construction is incomplete.

§537.31. Standard Contract Form TREC No. 24-18[~~24-17~~], New Home Contract (Completed Construction).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-18[~~24-17~~] approved by the Commission in 2021 for mandatory use in the sale of a new home where construction is completed.

§537.32. Standard Contract Form TREC No. 25-15[~~25-14~~], Farm and Ranch Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-15[~~25-14~~] approved by the Commission in 2021 for mandatory use in the sale of a farm or ranch.

§537.33. Standard Contract Form TREC No. 26-8[~~26-7~~], Seller Financing Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 26-8[~~26-7~~] approved by the Commission in 2015 for mandatory use as an addendum concerning seller financing.

§537.37. Standard Contract Form TREC No. 30-16[~~30-15~~], Residential Condominium Contract (Resale).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-16[~~30-15~~] approved by the Commission in 2021 for mandatory use in the resale of a residential condominium unit.

§537.43. Standard Contract Form TREC No. 36-10[~~36-9~~], Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-10[~~36-9~~] approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association.

§537.46. Standard Contract Form TREC No. 39-9[~~39-8~~], Amendment to Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 39-9[~~39-8~~] approved by the Commission in 2015 for mandatory use as an amendment to promulgated forms of contracts.

§537.47. Standard Contract Form TREC No. 40-10[~~40-9~~], Third Party Financing Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 40-10[~~40-9~~] approved by the Commission in 2019 for mandatory use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing.

§537.48. Standard Contract Form TREC No. 41-3[~~41-2~~], Loan Assumption Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 41-3[~~41-2~~] approved by the Commission in 2012 for mandatory use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan.

§537.51. Standard Contract Form TREC No. 44-3[~~44-2~~], Addendum for Reservation of Oil, Gas, and Other Minerals.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 44-3[~~44-2~~] approved by the Commission in 2014 for mandatory use as an addendum to be added to promulgated forms of contracts for the reservation of oil, gas, and other minerals.

§537.58. Standard Contract Form TREC No. 51-1[~~51-0~~], Addendum Regarding Residential Leases.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 51-1[~~51-0~~] approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms of contracts as related to lease agreements.

§537.59. Standard Contract Form TREC No. 52-1[~~52-0~~], Addendum Regarding Fixture Leases.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 52-1[~~52-0~~] approved by the Commission in 2020 for mandatory use as an addendum to be added to promulgated forms as related to fixture leases.

§537.65. Standard Contract Form TREC No. 57-0, Notice to Prospective Buyer.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 57-0 approved by the Commission in 2022 for voluntary use when the parties use a contract of sale that has not been approved for mandatory use by the Commission.

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202989
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 936-3057

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 110. HEARINGS UNDER THE ADMINSTRATIVE PROCEDURE ACT

26 TAC §§110.1, 110.3, 110.5, 110.7, 110.9, 110.11, 110.13, 110.15

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Texas Administrative Code (TAC), Part 1, and will be repealed or administratively transferred to 26 TAC, Health and Human Services, as appropriate. Until such action is taken, the rules in 40 TAC, Part 1, govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in 40 TAC, Part 1. Therefore, the Executive Commissioner of HHSC proposes new 26 TAC, Part 1, Chapter 110, concerning Hearings Under the Administrative Procedure Act, comprised of §§110.1, 110.3, 110.5, 110.7, 110.9, 110,11, 110.13, and 110.15.

BACKGROUND AND PURPOSE

The purpose of the proposal is to move appeals for Home and Community-based Services (HCS) and Texas Home Living (TxHmL) administrative penalties, contract terminations, vendor holds, recoupments, and denial of payment appeal cases from the HHSC Appeals Division to the Texas State Office of Administrative Hearings (SOAH). The proposal makes HCS and TxHmL consistent with other long-term care regulation programs that are heard by SOAH. The project will also update outdated rule references, change references to DADS to HHSC, and improve readability.

SECTION-BY-SECTION SUMMARY

The proposed new rules relocate content from the proposed repeal of 40 TAC, Chapter 91, to 26 TAC, Chapter 110, as well as change references to DADS to HHSC, change references to Commissioner to Executive Commissioner, update outdated rule references, and improve readability.

Proposed new §110.5(a)(5) and (6) adds the HCS and TxHmL programs to the list of contested cases heard by SOAH.

Proposed new §110.5(a)(21) clarifies that both long-term care regulation and provider investigations employee misconduct registry cases will be heard by SOAH.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create new rules;

(6) the proposed rules will not 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 economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not require a change to current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from all long-term care regulation appeal cases being handled consistently.

Trey Wood has also determined that for the first five years the rule repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the new rules do not require any change in current business practices or impose any additional fees or costs on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Josie Esparza, Program Specialist, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to hhscltcrrules@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) or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R045" in the subject line.

STATUTORY AUTHORITY

The new rules 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 §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new rules implement Texas Government Code §531.0055, §531.021, and Chapter 531, Subchapter A-1; and Texas Human Resources Code §32.021.

§110.1. Purpose.

The purpose of this chapter is to describe procedures for hearings under the Administrative Procedure Act, Texas Government Code, Chapter 2001 (relating to Administrative Procedure).

§110.3. Definitions.

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

(1) Administrative law judge (ALJ)--Unless otherwise specified, ALJ means both a SOAH ALJ and an HHSC ALJ.

(2) Commissioner--The Executive Commissioner of HHSC.

(3) Contested case--A contested case, as defined in Texas Government Code, §2001.003, to which HHSC is a party.

(4) HHSC--The Texas Health and Human Services Commission.

(5) Party--HHSC or another person named or admitted to participate in a contested case.

(6) PFD--Proposal for decision.

(7) SOAH--The State Office of Administrative Hearings.

(8) TAC--Texas Administrative Code.

§110.5. Contested Case Heard by SOAH.

(a) The State Office of Administrative Hearings (SOAH) hears a contested case arising from the following Texas Health and Human Services Commission (HHSC) programs, services, or activities:

(1) primary home care services;

(2) community attendant services;

(3) day activity and health services;

(4) the Community Living Assistance and Support Services Program;

(5) the Home and Community-based Services Program;

(6) the Texas Home Living Program;

(7) the Deaf-Blind Multiple Disabilities Program;

(8) the Medically Dependent Children Program;

(9) social services authorized by Title XX of the Social Security Act (42 United States Code §§1397 - 1397f);

(10) In-Home and Family Support services for a person without a diagnosis of an intellectual disability;

(11) the Program of All-Inclusive Care for the Elderly;

(12) licensure, certification, or contracting of a nursing facility, including a determination related to the Resource Utilization Group Classification System or other utilization review;

(13) hospice services;

(14) licensure or certification of an intermediate care facility for persons with an intellectual disability or related condition;

(15) licensure of a nursing facility administrator;

(16) licensure of an assisted living facility;

(17) licensure of a day activity and health services facility;

(18) licensure of a home and community support services agency;

(19) the nurse aide registry;

(20) the nurse aide training and competency evaluation program;

(21) the long-term care regulation and provider investigation employee misconduct registry; and

(22) the medication aide program.

(b) Before a contested case described in subsection (a) of this section is transferred to SOAH:

(1) the HHSC Appeals Division has exclusive jurisdiction over the case;

(2) Texas Administrative Code (TAC), Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and this chapter govern the case; and

(3) the parties may conduct discovery in accordance with 1 TAC Chapter 357, Subchapter I.

(c) The director of the HHSC Appeals Division transfers a contested case described in subsection (a) of this section to SOAH upon request for a hearing date by either party.

(d) SOAH conducts hearings in accordance with 1 TAC Chapter 155 (relating to Rules of Procedure) and this chapter.

(e) A SOAH administrative law judge issues a proposal for decision (PFD) in accordance with 1 TAC Chapter 155.

(f) If a party files PFD exceptions, or a reply to exceptions, the party must comply with 1 TAC Chapter 155.

§110.7. Contested Case Heard by HHSC.

(a) The Texas Health and Human Services Commission (HHSC) Appeals Division hears a contested case other than one described in §110.5(a) of this chapter (relating to Contested Case Heard by SOAH).

(b) The HHSC Appeals Division conducts a hearing in accordance with Texas Administrative Code (TAC), Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and this chapter.

(c) An HHSC administrative law judge (ALJ) schedules a hearing upon request for a hearing date by either party.

(d) An HHSC ALJ issues a proposal for decision (PFD) in accordance with 1 TAC §357.497 (relating to Proposals for Decision, Exceptions, and Replies) within 60 days after the hearing record is closed.

(e) If a party files PFD exceptions, or a reply to exceptions, the party must comply with 1 TAC §357.497.

§110.9. Review of Proposal for Decision.

(a) The Texas Health and Human Services Commission (HHSC) Executive Commissioner, or the Executive Commissioner's designee, reviews a proposal for decision (PFD) issued by an administrative law judge (ALJ), exceptions to the PFD, and a reply to the exceptions. The HHSC executive commissioner or designee may change a finding of fact or conclusion of law, or may vacate or modify an order issued by the ALJ only if the executive commissioner or designee determines:

(1) that the ALJ did not properly apply or interpret applicable law, rule, policy provided to the ALJ, or prior administrative decision;

(2) that the ALJ relied on a prior administrative decision that is incorrect and should not be relied upon; or

(3) that a technical error in a finding of fact should be corrected.

(b) The HHSC Executive Commissioner or designee states in writing the specific reason and legal basis for a change made in accordance with this section.

§110.11. Issuance and Finality of Decision.

(a) After reviewing a proposal for decision (PFD), the Texas Health and Human Services Commission (HHSC) Executive Commissioner or the Executive Commissioner's designee issues a signed decision in a contested case. The decision either:

(1) adopts the findings of fact and conclusions of law contained in the PFD; or

(2) makes changes in accordance with §110.9 of this chapter (relating to Review of Proposal for Decision).

(b) The HHSC Executive Commissioner or designee mails the decision by first class mail and by certified mail, return receipt requested, to the parties or their representatives to their last known addresses. A party or representative is presumed to have been notified of the decision on the third day after the date on which the decision is mailed.

(c) In accordance with Texas Government Code §2001.144, a decision in a contested case is final:

(1) if a motion for rehearing is not filed in accordance with §110.13 of this chapter (relating to Motion for Rehearing), on the last date a motion for rehearing can be filed in accordance with §110.13 of this chapter;

(2) if a motion for rehearing is filed in accordance with §110.13 of this chapter, on the date:

(A) an order overruling the motion for rehearing is signed; or

(B) the motion for rehearing is overruled by operation of law;

(3) if HHSC finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision, on the date the decision is signed; or

(4) on the date specified in the decision, if all parties agree to the specified date in writing or on the record and the specified date is not before the date the decision is signed or later than the 20th day after the date the decision is signed.

(d) If a decision is final under subsection (c)(3) of this section, the HHSC Executive Commissioner or designee recites in the decision the finding made under subsection (c)(3) of this section and the fact that the decision is final and effective on the date signed.

§110.13. Motion for Rehearing.

A motion for rehearing is governed by Texas Government Code §2001.146, as follows.

(1) A party may file a motion for rehearing. A motion for rehearing must be in writing and must be received by the Texas Health and Human Services Commission (HHSC) Executive Commissioner or the Executive Commissioner's designee within 20 days after the date the party or party's representative is notified of a decision in accordance with §110.11(b) of this chapter (relating to Issuance and Finality of Decision).

(2) A party may file a reply to a motion for rehearing. A reply must be in writing and be filed with the HHSC Executive Commissioner or designee not later than the 30th day after the date on which the party or party's representative is notified of a decision in accordance with §110.11(b) of this chapter.

(3) The HHSC Executive Commissioner or designee acts on a motion for rehearing not later than the 45th day after the date on which the party or party's representative is notified of a decision in accordance with §110.11(b) of this chapter, or the motion for rehearing is overruled by operation of law.

(4) The Executive Commissioner or designee may by written order extend the time for filing a motion for rehearing or a reply, or for acting on a motion for rehearing under this section, except an extension may not extend the period for acting on a motion for rehearing beyond the 90th day after the date on which the party or the party's representative is notified of a decision in accordance with §110.11(b) of this chapter.

(5) If the HHSC Executive Commissioner or designee issues an order extending the time for filing a motion for rehearing or a reply, or for acting on a motion for rehearing under this section, the motion for rehearing is overruled by operation of law on the date specified in the order. If the order does not specify a date, the motion for rehearing is overruled by operation of law 90 days after the date on which the party or party's representative is notified of a decision in accordance with §110.11(b) of this chapter.

§110.15. Judicial Review.

(a) In accordance with Texas Government Code §2001.145, a decision that is final under §110.11(c)(2) - (4) of this chapter (relating to Issuance and Finality of Decision) is appealable; however, a timely motion for rehearing is a prerequisite to appeal a decision that is final under §110.11(c)(2) of this chapter.

(b) In accordance with Texas Government Code §2001.171, a person who has exhausted all administrative remedies at the Texas Health and Human Services Commission and who is aggrieved by a final decision in a contested case is entitled to judicial review under Texas Government Code, Chapter 2001.

(c) In accordance with Texas Government Code §2001.176(b)(3), filing a petition to initiate judicial review of a contested case does not affect the enforcement of a final decision for which the manner of review authorized by law is other than trial de novo.

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 August 10, 2022.

TRD-202202972
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 438-3161

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.101

The Comptroller of Public Accounts proposes amendments to §3.101, concerning cigarette tax and stamping activities. The comptroller proposes amendments to implement Senate Bill 248, 87th Legislature, 2021. Senate Bill 248 allows a person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer to store the cigarettes exclusively in an interstate warehouse.

The comptroller adds subsection (a)(2) to the define "cigar." The comptroller takes this definition from Tax Code, §155.001 (Definitions). The comptroller renumbers all relevant paragraphs in this subsection after each new definition. The comptroller amends the definition of "first sale" in renumbered paragraph (6) to specify that sales to an interstate warehouse and interstate warehouse transactions do not constitute a first sale. The comptroller adds new paragraphs (8) and (9), defining the terms interstate warehouse and interstate warehouse transaction. The comptroller takes these definitions from Tax Code §154.001 (Definitions).

The comptroller also amends renumbered paragraph (13) to specifically state that an "interstate warehouse" is not a wholesaler.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to 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 amended 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 78711-3528 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.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §154.001 (Definitions).

§3.101. Cigarette Tax and Stamping Activities.

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

(1) Bonded agent--A person in this state who is a third-party agent of a manufacturer outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer.

(2) Cigar--A roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

(3) [~~(2)~~] Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(4) [~~(3)~~] Distributor--A person who:

(A) is authorized to purchase for the purpose of making a first sale in this state, cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer.

(5) [~~(4)~~] Export warehouse--A person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(6) [~~(5)~~] First sale--Except as otherwise provided in this section;

(A) the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, which:

(i) includes the sale of cigarettes by:

(I) a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and [~~includes the sale of cigarettes by~~]

(II) a manufacturer in this state who transfers the cigarettes in this state; and

(ii) does not include:

(I) the sale of cigarettes by a manufacturer outside this state to a distributor in this state; [~~and does not include~~]

(II) the transfer of cigarettes from a manufacturer outside this state to a bonded agent in this state;

(III) the sale of cigarettes by a manufacturer, bonded agent, distributor, or importer to an interstate warehouse in this state; or

(IV) the transfer of cigarettes by an interstate warehouse in an interstate warehouse transaction;

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss.

(7) [~~(6)~~] Individual package of cigarettes--A package that contains at least 20 cigarettes.

(8) Interstate warehouse--A person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer and stores the cigarettes exclusively for an interstate warehouse transaction.

(9) Interstate warehouse transaction--The sale or delivery of cigarettes from an interstate warehouse to a person located in another state who is licensed or permitted by the other state to affix that state's cigarette stamps or otherwise pay the state's excise tax on cigarettes as required.

(10) [~~(7)~~] Manufacturer--A person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution.

(11) [~~(8)~~] Retailer--A person who engages in the business of selling cigarettes to consumers and includes the owner of a cigarette vending machine.

(12) [~~(9)~~] Stamp--Includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by this chapter;

(C) is consecutively numbered and uniquely identifiable as a Texas tax stamp; and

(D) is not damaged beyond recognition as a valid Texas tax stamp.

(13) [~~(10)~~] Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale but who is not a distributor or interstate warehouse.

(b) Imposition of tax.

(1) A tax is imposed on a person who uses or disposes of cigarettes in this state. The tax rate is $70.50 per thousand on cigarettes weighing three pounds or less per thousand plus $2.10 per thousand on cigarettes weighing more than three pounds per thousand. The tax becomes due and payable when a person receives cigarettes to make a first sale. A person who pays the tax shall securely affix a stamp to

each individual package of cigarettes to show payment of the tax. The ultimate consumer or user of cigarettes in this state bears the impact of the tax; and, if another person pays the tax, the amount of the tax is added to the price to the ultimate consumer or user. Absence of a stamp on an individual package of cigarettes is notice that the tax has not been paid.

(2) Cigarettes are exempt from the imposition of tax and the stamping requirements described in this section if the cigarettes are:

(A) contained in a package labeled with "Experimental Use Only," "Reference Cigarettes," or other similar wording indicating that the manufacturer intends for the product to be used exclusively for experimental purposes in compliance with Experimental Purposes, 27 C.F.R. §40.232 (2002);

(B) sold directly by a manufacturer to a research facility in this state, including:

(i) a laboratory, hospital, medical center, college, or university; or

(ii) a facility designated as a Tobacco Center of Regulatory Science by the National Institutes of Health;

(C) used by the research facility exclusively for experimental purposes; and

(D) not resold by the research facility.

(c) Liability of a permitted distributor. A permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax.

(d) Cigarette tax stamp meters. Cigarette distributors cannot use stamp metering machines as evidence of payment of the cigarette tax.

(e) Cigarette tax stamp credits.

(1) Allowance of credit for cigarette tax stamps. The comptroller may authorize credit for:

(A) stamps that are affixed to cigarette packages that have been damaged or are unfit for sale and have been returned to the manufacturer in accordance with Tax Code, §154.306 (Exchange of Stamps);

(B) stamps that have been destroyed by vandalism, fire, flood, or other natural disasters. The distributor must present evidence that such stamps were purchased by the distributor and were subsequently destroyed by such natural disaster;

(C) stamps that have been erroneously affixed to cigarette carton flaps rather than the cigarette packages. The distributor must submit the stamped carton flaps to the comptroller in order to obtain credit. The comptroller will issue an authorization for refund of the tax with disallowance of the stamping discount;

(D) stamps used to restamp cigarette packages provided that the original tax stamps were of an illegible quality and the restamping is required by the comptroller's office. There is no stamping allowance for restamped cigarettes; or

(E) stamps that have been torn or otherwise damaged by a stamping machine. The distributor must submit the damaged stamps to the comptroller in order to obtain credit. The comptroller will notify the distributor of the amount of stamp credit authorized.

(2) Disallowance of credit for cigarette tax stamps. The comptroller will not authorize credit for stamps lost due to theft, negligence, or any unaccountable loss or for stamps that have been affixed two or more times to the same package of cigarettes resulting in double stamping.

(f) Cigarette tax stamp payments. All persons who purchase cigarette tax stamps from the comptroller shall transfer payments by electronic funds transfer.

(g) Evidence of return of cigarettes unfit for use. A distributor who requests replacement of cigarette tax stamps affixed to cigarettes that have been returned to the manufacturer must submit the following documentation to the comptroller:

(1) a credit memorandum from the manufacturer to whom the cigarettes were returned, verifying the number of cigarettes returned for credit;

(2) an affidavit from the manufacturer confirming that the tax stamps affixed to the cigarettes listed in the memorandum have been destroyed and listing the number, denomination, and the value of such stamps; and

(3) an affidavit from the distributor stating that the distributor returned the number of cigarettes listed in the manufacturer's credit memorandum and that the number, denomination, and the value of state cigarette tax stamps shown in the manufacturer's affidavit were affixed to the cigarettes returned.

(h) Delivery of unstamped cigarettes to instrumentalities of the United States government.

(1) Distributors may use their own vehicles to deliver previously invoiced quantities of unstamped cigarettes to instrumentalities of the United States government. These tax-free cigarettes must be packaged in a manner that prevents the unstamped cigarettes from commingling with any other cigarettes in the distributor's vehicle.

(2) Each sale of unstamped cigarettes by a distributor to an instrumentality of the United States government shall be supported by a separate sales invoice and a properly completed federal exemption certificate. Sales invoices must be numbered and dated and must show the name of the seller, name of the purchaser, and the destination.

(i) Generation and affixing of cigarette tax stamps by the Texas Alcoholic Beverage Commission (TABC).

(1) The comptroller, by interagency cooperation contract, may authorize the TABC to generate a cigarette tax stamp using the TABC's Port of Entry Tax Collection System and to affix the cigarette tax stamp to cigarette packages for the purpose of collecting the cigarette tax at ports of entry into the state.

(2) The TABC imposes a rate of $1.50 per pack for a conventional package of 20 cigarettes.

(3) Payment for the cigarette tax stamps sold will be made by that agency according to the terms and conditions stipulated in the interagency cooperation contract between the comptroller and the TABC.

(j) Affixing of cigarette tax stamps by TABC agents. Cigarette tax stamps affixed by agents of the TABC must be affixed to the cellophane wrapper on the bottom of each individual package of cigarettes.

(k) Disposition of cigarettes seized by TABC agents.

(1) TABC agents shall seize all cigarettes for which the holder refuses to pay the tax imposed by Tax Code, §154.021 (Imposition and Rate of Tax).

(2) Cigarettes seized shall be released to agents of the comptroller for ultimate disposition.

(l) Importation of cigarettes for personal use.

(1) Only a person 21 years of age or older, a person who is at least 18 and in the United States military or State military forces, or a person who was born on or before August 31, 2001, may import and personally transport cigarettes into this state.

(2) A person who imports and personally transports 200 or fewer cigarettes into this state from another state or an Indian reservation under the jurisdiction of the U.S. government, for personal use and not for sale, is not required to pay the tax imposed by Tax Code, §154.021.

(3) TABC employees shall collect the tax imposed by Tax Code, §154.021, at ports of entry from each person who imports and personally transports more than 200 cigarettes into this state from another country.

(4) TABC employees shall seize at ports of entry all cigarettes in the possession of a person younger than 21 years of age, unless the person is at least 18 and in the United States military or State military forces, or was born on or before August 31, 2001.

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 August 15, 2022.

TRD-202203034
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 475-2220

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34 TAC §3.102

The Comptroller of Public Accounts proposes amendments to §3.102, concerning applications, definitions, permits, and reports. The comptroller proposes amendments to implement Senate Bill 248, 87th Legislature, 2021. Senate Bill 248 requires a person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer to store the cigarettes exclusively in an interstate warehouse. The comptroller proposes amendments to add a definition of cigar, to remove language regarding sales made by a permitted bonded agent from a vehicle, and to address that a permitted importer is required to be a permitted distributor.

The comptroller adds three new definitions to subsection (a) and renumbers all relevant paragraphs after each new definition. The comptroller adds new subsection (a)(3) to define "cigar." The comptroller takes this definition from Tax Code, §155.001 (Definitions). The comptroller amends the definition of "first sale" in renumbered paragraph (10) to identify that interstate warehouse transactions and sales to an interstate warehouse do not constitute a first sale. The comptroller adds new paragraphs (12) and (13), defining the terms interstate warehouse and interstate warehouse transaction. The comptroller takes these definitions from Tax Code, §154.001 (Definitions).

The comptroller also amends renumbered paragraph (17) to include "interstate warehouse" as a permit holder and amends renumbered paragraph (21) to specifically state that an interstate warehouse is not a wholesaler.

The comptroller amends subsection (b)(1) to include that an interstate warehouse must have a valid permit to engage in business in Texas and that failure to obtain the permit subjects the person to a penalty of not more than $2,000 for each violation. The comptroller amends paragraph (2) to include that each interstate warehouse shall obtain a permit for each place of business owned or operated by an interstate warehouse.

The comptroller removes "bonded agent" from paragraph (4) concerning selling cigarettes from a vehicle. A bonded agent delivers or distributes cigarettes on behalf of the manufacturer and cannot sell cigarettes from a vehicle. A bonded agent may still deliver invoiced product from a vehicle, which does not require obtaining a permit.

The comptroller amends paragraphs (5) and (7) for readability. Additionally, the comptroller adds paragraph (9) to state that the comptroller may not issue a combination permit to a person who is an interstate warehouse.

The comptroller adds new paragraph (10) to specify that a permitted importer is required to be a permitted distributor.

The comptroller amends subsection (c)(1) to include that a manufacturer outside this state who is not a permitted distributor may sell cigarettes to an interstate warehouse in addition to another permitted distributor. The comptroller amends paragraph (2) to state when a permitted distributor may sell cigarettes to an interstate warehouse. The comptroller amends paragraph (3) to add an interstate warehouse to the list of entities to whom a permitted importer may sell cigarettes.

The comptroller adds new paragraph (8) to clarify that an interstate warehouse may sell cigarettes only in an interstate warehouse transaction. Intrastate sales are only allowed with written authorization by the comptroller.

The comptroller amends subsection (d)(1) to include that an interstate warehouse permit expires on the last day of February of each year.

The comptroller amends subsection (e) to include that an application for an interstate warehouse permit must be accompanied by the appropriate fee and to add the methods by which payment can be made. The comptroller amends paragraph (2) to add the $300 permit fee for an interstate warehouse and renumbers the following paragraphs. The comptroller amends renumbered paragraph (8) to remove language that conflicts with the definition of "engage in business" and clarifies that a manufacturer who is located out of state with no representation in Texas is not required to register with the comptroller. The comptroller takes this definition from Tax Code, §155.001 (Definitions).

The comptroller amends subsection (f)(1) to include that the comptroller shall issue a permit to an interstate warehouse if the comptroller receives an application, the applicable fee, and believes the issuance will not jeopardize enforcement of Tax Code, Chapter 154 (Cigarette Tax).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to 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 amended 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 78711-3528 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.*

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §154.001 (Definitions) and §154.101 (Permits).

§3.102. Applications, Definitions, Permits, and Reports.

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

(1) Agency--The Comptroller of Public Accounts of the State of Texas or the comptroller's duly authorized agents and employees.

(2) Bonded agent--A person in this state who is a third-party agent of a manufacturer outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer.

(3) Cigar--A roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

(4) [~~(3)~~] Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(5) [~~(4)~~] Commercial business location--The entire premises occupied by a permit applicant or a person required to hold a permit under Tax Code, Chapter 154 (Cigarette Tax). A commercial business location cannot include a residence or a unit in a public storage facility.

(6) [~~(5)~~] Consumer--A person who possesses cigarettes for personal consumption.

(7) [~~(6)~~] Distributor--A person who:

(A) is authorized to purchase, for the purpose of making a first sale in this state, cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer.

(8) [~~(7)~~] Engage in business--A person engaging either directly or through a representative, in any of the following activities:

(A) selling cigarettes in or into this state;

(B) using a warehouse or another location to store cigarettes; or

(C) otherwise conducting through a physical presence cigarette-related business in this state.

(9) [~~(8)~~] Export warehouse--A person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(10) [~~(9)~~] First sale--Except as otherwise provided in this section; [~~,~~]

(A) the first [~~sale means the first~~] transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, which includes:

(i) [~~(A)~~] the sale of cigarettes [~~tobacco products~~] by:

(ii) a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and

(iii) a manufacturer in this state who transfers the tobacco products in this state; and

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss. First sale also includes giving away cigarettes as promotional items.

(11) [~~(10)~~] Importer--A person who ships, transports, or imports into this state cigarettes manufactured or produced outside the United States for the purpose of making a first sale in this state.

(12) Interstate warehouse--A person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer and stores the cigarettes exclusively for an interstate warehouse transaction.

(13) Interstate warehouse transaction--The sale or delivery of cigarettes from an interstate warehouse to a person located in another state who is licensed or permitted by the other state to affix that state's cigarette stamps or otherwise pay the state's excise tax on cigarettes as required.

(14) [~~(11)~~] Manufacturer--A person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution.

(15) [~~(12)~~] Manufacturer's representative--A person employed by a manufacturer to sell or distribute the manufacturer's stamped cigarette packages.

(16) [~~(13)~~] Permit--Any agency license, certificate, approval, registration, or similar form of permission required by law to buy, sell, stamp, store, transport, or distribute cigarettes. A permit includes a vending machine decal.

(17) [~~(14)~~] Permit holder--A person who has been issued a bonded agent, interstate warehouse, distributor, importer, export warehouse, manufacturer, wholesaler, or retailer permit under Tax Code, §154.101 (Permits).

(18) [~~(15)~~] Place of business--

(A) a commercial business location where cigarettes are sold;

(B) a commercial business location where cigarettes are kept for sale or consumption or otherwise stored;

(C) a vehicle from which cigarettes are sold; or

(D) a vending machine from which cigarettes are sold.

(19) [~~(16)~~] Retailer--A person who engages in the business of selling cigarettes to consumers. The owner of a cigarette vending machine is a retailer.

(20) [~~(17)~~] Stamp--Includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by Tax Code, §154.021 (Imposition and Rate of Tax);

(C) is consecutively numbered and uniquely identifiable as a Texas cigarette tax stamp; and

(D) is not damaged beyond recognition as a valid Texas tax stamp.

(21) [~~(18)~~] Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale. A wholesaler is not a distributor or interstate warehouse.

(b) Permits required.

(1) To engage in business as a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse, or retailer, a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number. Tax Code, §154.501(a)(2) (Penalties), provides that a person who engages in the business of a bonded agent, interstate warehouse, distributor, importer, manufacturer, export warehouse, wholesaler, or retailer without a valid permit is subject to a penalty of not more than $2,000 for each violation. Tax Code, §154.501(c), provides that a separate offense is committed each day on which a violation occurs.

(2) Each distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse, or retailer shall obtain a permit for each place of business owned or operated by the distributor, importer, manufacturer, wholesaler, bonded agent, interstate warehouse, or retailer. A new permit shall be required for each physical change in the location of the place of business. Correction or change of street listing by a city, state, or U.S. Post Office shall not require a new permit so long as the physical location remains unchanged.

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required for each separate place of business. For example, each retailer who operates a cigarette vending machine shall place a retailer's permit on the machine.

(4) A vehicle from which cigarettes are sold is considered to be a place of business and requires a permit. A motor vehicle permit is issued to a [~~bonded agent,~~] distributor[~~,~~] or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. No cigarette permit is required for a vehicle used only to deliver invoiced cigarettes.

(5) The comptroller may issue a combination permit for [~~cigarettes, tobacco products, or~~] cigarettes and tobacco products to a person who is a distributor, importer, manufacturer, wholesaler, bonded agent, interstate warehouse, or retailer as defined by Tax Code, Chapter 154 and Chapter 155 (Cigars and Tobacco Products Tax). A person who receives a combination permit pays only the higher of the two permit fees.

(6) The comptroller will not issue a permit for a residence or a unit in a public storage facility because cigarettes may not be stored at such places.

(7) A permit is not required for a [~~This section does not apply to a~~] research facility that possesses and only uses cigarettes for experimental purposes.

(8) A person who engages in the business of selling cigarettes for commercial purposes who provides a roll-your-own machine that is available for use by consumers must obtain a manufacturer's, distributor's and a retailer's permit.

(9) A person may not hold any other permits required by this section in conjunction with an interstate warehouse permit for the same location.

(10) A person who engages in the business of importing cigarettes from a foreign country into Texas is required to be permitted as a cigarette distributor.

(c) Sales and purchase requirements for permit holders. Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders as provided by this section. A permit holder may engage in the following business activities:

(1) A manufacturer outside this state who is not a permitted distributor may sell cigarettes only to a permitted distributor or interstate warehouse.

(2) A permitted distributor may sell cigarettes only to a permitted distributor, wholesaler, or retailer. A permitted distributor who manufactures or produces cigarettes in this state may sell those cigarettes to a permitted interstate warehouse.

(3) A permitted importer may sell cigarettes only to a permitted interstate warehouse, distributor, wholesaler, or retailer.

(4) A permitted wholesaler may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(5) A permitted retailer may sell cigarettes only to the consumer and may purchase cigarettes only from a permitted distributor or wholesaler.

(6) A permitted export warehouse may sell cigarettes only to persons authorized to sell or consume unstamped cigarettes outside the United States.

(7) A manufacturer's representative may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(8) A permitted interstate warehouse may sell cigarettes only in an interstate warehouse transaction. An interstate warehouse

may not make an intrastate sale of cigarettes without written authorization by the comptroller.

(d) Permit period.

(1) Bonded agent, interstate warehouse, distributor, importer, manufacturer, wholesaler, and motor vehicle permits expire on the last day of February of each year.

(2) Retailer permits expire on the last day of May of each even-numbered year.

(e) Permit fees. An application for a bonded agent, interstate warehouse, distributor, manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the appropriate fee. The permit fee payment must be made in cash, by money order, check, or credit card.

(1) The permit fee for a bonded agent is $300.

(2) The permit fee for an interstate warehouse is $300.

(3) [~~(2)~~] The permit fee for a distributor is $300.

(4) [~~(3)~~] The permit fee for a manufacturer with representation in Texas is $300.

(5) [~~(4)~~] The permit fee for a wholesaler is $200.

(6) [~~(5)~~] The permit fee for a motor vehicle is $15.

(7) [~~(6)~~] The permit fee for a retailer permit is $180.

(8) [~~(7)~~] No permit fee is required to obtain an importer or an export warehouse permit [~~or to register a manufacturer if the manufacturer is located out of state with no representation in Texas~~].

(9) [~~(8)~~] A $50 fee is assessed for failure to obtain a permit in a timely manner.

(10) [~~(9)~~] The comptroller prorates the permit fee for new permits according to the number of months remaining in the permit period. If a permit will expire within three months of the date of issuance, the comptroller may collect the prorated permit fee for the current permit period and the total permit fee for the next permit period.

(11) [~~(10)~~] A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

(f) Permit issuance, denial, suspension, or revocation.

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse or retailer if the comptroller receives an application and any applicable fee, believes that the applicant has complied with Tax Code, §154.101, and determines that issuing the permit will not jeopardize the administration and enforcement of Tax Code, Chapter 154.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied because of the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052 (Judicial Review), and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(g) Reports.

(1) Manufacturer reports must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(2) All cigarette distributor and wholesaler reports and payments must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(3) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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 August 15, 2022.

TRD-202203035
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 475-2220

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4011

The Comptroller of Public Accounts proposes amendments to §9.4011, concerning appraisal of timberlands. These amendments reflect updates and revisions to the manual for the appraisal of timberland. The proposed updated manual may be viewed at https://comptroller.texas.gov/taxes/property-tax/rules/index.php.

The amendments update and revise the October 2020 manual for the appraisal of timberland. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising timberland and restricted-use timberland under Tax Code, Chapter 23, Subchapters E and H.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated throughout to reflect 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 the changes to the application process and the added deadlines to implement Senate Bill 63, 87th Legislature, R.S. (2021).

Pursuant to Tax Code, §23.73(b), these rules have been approved by the Comptroller with the review and counsel of the Texas A&M Forest Service.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative ap-

propriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These amendments are proposed under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.73 (Appraisal of Qualified Timber Land); and 23.9803 (Appraisal of Qualified Restricted-Use Timber Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising timberland and restricted-use timberland for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapters E and H.

§9.4011. Appraisal of Timberlands.

Adoption of the Manual for the Appraisal of Timberland. This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland and restricted use timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Timberland dated March 2022. Copies of this manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528 or from the Property Tax Assistance Division website. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. This manual and those that have been superseded are available from the Comptroller's office as well as the State Archives.

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 August 12, 2022.

TRD-202203008
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 91. HEARINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

40 TAC §§91.1 - 91.8

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation of and provision of services by the health and human services system, including rules in Texas Administrative Code (TAC), Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes the repeal of 40 TAC, Part 1, Chapter 91, Hearings Under the Administrative Procedure Act, comprised of §§91.1 - 91.8.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal 40 TAC, Chapter 91.

SECTION-BY-SECTION SUMMARY

The proposed repeal of 40 TAC, Chapter 91 deletes the rules as no longer needed, because the content of the rules has been added to proposed new 26 TAC, Chapter 110.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule repeals will be in effect, enforcing or administering the repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed repeals will not create new rules;

(6) the proposed repeals will repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed repeals do not require a change to current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from the repeal of 40 TAC, Chapter 91 because it will be easier to find the new rules in 26 TAC, Chapter 110.

Trey Wood has also determined that for the first five years the rules are repealed, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the repeals do not impose any additional costs on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Josie Esparza, Program Specialist, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to hhscltcr-rules@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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R045" in the subject line.

STATUTORY AUTHORITY

The repeals 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 §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals implement Texas Government Code §531.0055, §531.021, and Chapter 531, Subchapter A-1; and Texas Human Resources Code §32.021.

§91.1. Purpose.
§91.2. Definitions.
§91.3. Contested Case Heard by SOAH.
§91.4. Contested Case Heard by HHSC.
§91.5. Review of Proposal for Decision.
§91.6. Issuance and Finality of Decision.
§91.7. Motion for Rehearing.
§91.8. Judicial Review.

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

Filed with the Office of the Secretary of State on August 10, 2022.

TRD-202202971
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 438-3161

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PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) proposes amendment to Chapter 452, Advisory Committees.

PART I. PURPOSE AND BACKGROUND

The proposed amendment is made 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.

PART II. EXPLANATION OF SECTIONS

Section 452.2

Subsection (d) (2) deletes "majority of members" to read "members" and changes eligibility requirements to include only current Veteran County Service Officers.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Nall, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule amendments are in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

(1) The proposed rule amendments will not create or eliminate a government program.

(2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.

(3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendments.

(5) The proposed rule amendments will not require new regulations.

(6) The proposed rule amendments have no effect on existing regulations.

(7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

PART V. STATUTORY AUTHORITY

The rule amendment is proposed 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.

No other statutes, rules, or regulations are affected.

§452.2. Advisory Committees.

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

(d) Veterans County Service Officer Advisory Committee.

(1) Purpose. The purpose of the Veterans County Service Officer Advisory Committee is to develop recommendations to improve the support and training of Veterans County Service Officers and to increase coordination between Veterans County Service Officers and the Texas Veterans Commission related to the statewide network of services being provided to veterans.

(2) Committee member qualifications. The [~~majority of~~] members shall be current Veteran [~~, 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.

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 August 12, 2022.

TRD-202203023
Cory Scanlon
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-3288

40 TAC §452.4

The Texas Veterans Commission (commission) proposes amendment to Chapter 452, §452.4, Alternative Dispute Resolution.

PART I. PURPOSE AND BACKGROUND

The proposed amendment is made to eliminate language that is no longer applicable.

PART II. EXPLANATION OF SECTIONS

Section 452.4 Alternative Dispute Resolution.

Subsection (b) deletes the title "Chief Administrative Officer" and adds "Director of Resource Management."

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Nall, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule are in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

(1) The proposed rule amendments will not create or eliminate a government program.

(2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.

(3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendments.

(5) The proposed rule amendments will not require new regulations.

(6) The proposed rule amendments have no effect on existing regulations.

(7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

PART V. STATUTORY AUTHORITY

The rule amendment is proposed 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.

No other statutes, rules, or regulations are affected.

§452.4. Alternative Dispute Resolution.

(a) (No change.)

(b) The commission's Director of Resource Management [~~Chief Administrative Officer~~] or designee shall be the commission's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

(1) coordinate the implementation of the policy set out in subsection (a) of this section;

(2) serve as a resource for any staff training or education needed to implement the ADR procedures; and

(3) collect data to evaluate the effectiveness of ADR procedures implemented by the commission.

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on August 12, 2022.

TRD-202203024
Cory Scanlon
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 463-3288

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER M. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING FINANCIAL ASSISTANCE

40 TAC §§800.550 - 800.557

The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter 800, relating to General Administration:

Subchapter M. Tax Refund for Wages Paid to Employee Receiving Financial Assistance, §§800.550 - 800.557

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of proposed new Chapter 800, Subchapter M is to establish administrative rules to clarify the requirements and eligibility determination applicable under Texas Labor Code, Chapter 301, Subchapter H, relating to Tax Refund for Wages Paid to Employee Receiving Financial Assistance.

Senate Bill (SB) 82, enacted by the 73rd Texas Legislature, Regular Session (1993), amended Texas Human Resources Code, Chapter 31 by adding Subchapter D, Tax Refund for Wages Paid to Employee Receiving Financial Assistance (Tax Refund Program). The Tax Refund Program required the Texas Department

of Human Services (DHS) to provide tax vouchers to persons upon application and certification of eligibility.

In 1997, the 75th Texas Legislature enacted SB 1113, which transferred the Tax Refund Program from the Texas Human Resources Code, Chapter 31, Subchapter D to Texas Labor Code, Chapter 301, Subchapter H, effectively moving the application eligibility and certification procedures from DHS to TWC. SB 1113 also implemented new rulemaking authority, allowing TWC to "adopt rules as necessary to carry out its powers and duties under this subchapter" and required DHS to provide information to TWC that is required to determine eligibility for persons applying for the Tax Refund.

The Comptroller of Public Accounts' rule under 34 Texas Administrative Code (TAC) §3.4, implemented in 1995, was not amended when the program transitioned from DHS to TWC. TWC did not establish rule to operate the Tax Refund Program. The application and eligibility certification procedures related to the Tax Refund Program have been operated by TWC staff since 1997 through publicly available information and a tax refund application form, currently maintained on TWC's Work Opportunity Tax Credit Program Overview webpage.

The Comptroller's office is reviewing possible amendments to 34 TAC §3.4 that would eliminate reference to eligibility determinations in its rule. TWC determined that the establishment of an administrative rule to clarify the requirements and eligibility determination applicable under Texas Labor Code, §301.107 is now needed.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER M. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING FINANCIAL ASSISTANCE

TWC proposes new Subchapter M, as follows:

§800.550. Purpose

New §800.550 states the purpose and goal for Chapter 800, Subchapter M.

§800.551. Definitions

New §800.551 defines terms used in Chapter 800, Subchapter M.

§800.552. Tax Refund Voucher

New §800.552(a) states that TWC shall issue tax refund vouchers in the amounts allowed by and subject to restrictions in Chapter 800, Subchapter M. New §800.552(b) states that a person issued a tax refund voucher may apply for the tax refund.

§800.553. Amount of Refund: Limitation

New §800.553(a) states the maximum amount of the potential tax refund allowed per employee that is certified under new §800.554 and §800.555. New §800.553(b) states that the refund amount cannot exceed the amount of net tax paid by the person to the State of Texas after any other applicable tax credits for the calendar year.

§800.554. Eligibility

New §800.554 describes the eligibility required for the tax refund. New §800.554(1) describes the eligibility requirements regarding wages incurred by a person for service of an employee. New §800.554(2) refers to the certification requirements in new §800.555, and new §800.554(3) describes the options for a person to provide and pay a part of the cost for health care coverage.

§800.555. Certification

New §800.555 describes the time parameters for an employee to be receiving financial or medical assistance prior to employment.

§800.556. Application for Refund: Issuance

New §800.556 identifies the time period, on or after January 1 and before April 1, for persons to submit applications for the previous calendar year. New §800.556(b) gives TWC the authority to promulgate the application for the tax refund voucher. New §800.556(c) limits the use of the tax refund voucher to the year for which the voucher is issued.

§800.557. Limitations.

New §800.557(a) reinforces the requirement of health care coverage for the employee under new §800.554(3). New §800.557(b) identifies rules of conveyance, assignment, or transfer of a refund under Chapter 800, Subchapter M.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as dis-

cussed elsewhere in this preamble, is to establish administrative rules to clarify the requirements and eligibility determination applicable under Texas Labor Code, Chapter 301, Subchapter H.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC determined that during the first five years the rules will be in effect, they will not:

--create or eliminate a government program;

--require the creation or elimination of employee positions;

--require an increase or decrease in future legislative appropriations to TWC;

--require an increase or decrease in fees paid to TWC;

--create a new regulation;

--expand, limit, or eliminate an existing regulation;

--change the number of individuals subject to the rules; and

--positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide a tax refund incentive for persons to hire employees on Medicaid or receiving Temporary Assistance for Needy Families benefits.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the policy concept for the new rules to the Boards for consideration and review on April 19, 2022. TWC also conducted a conference call with Board executive directors and Board staff on April 22, 2022, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 26, 2022.

PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.107(a), which stipulates that TWC shall adopt rules as necessary to carry out its powers and duties under Chapter 301, Subchapter H.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 301.

§800.550. Purpose.

The purpose of this subchapter is to establish rules for the Tax Refund for Wages Paid to Employee Receiving Financial Assistance in accordance with Texas Labor Code, Chapter 301, Subchapter H.

§800.551. Definitions.

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

(1) Comptroller--The comptroller of public accounts of the State of Texas, as defined under Texas Government Code, Chapter 403.

(2) Person--A "person" is:

(A) a business entity located in this state;

(B) a governmental subdivision located in this state; or

(C) a public or private organization located in this state that is not a state agency.

§800.552. Tax Refund Voucher.

(a) The Agency shall issue a tax refund voucher in the amount allowed by this subchapter and subject to the restrictions imposed by this subchapter to a person that meets the eligibility requirements under this subchapter.

(b) A person issued a tax refund voucher may, subject to the provisions of this subchapter, apply to the comptroller's office for a refund of taxes in accordance with Texas Labor Code, §301.106.

§800.553. Amount of Refund: Limitation.

(a) The amount of the refund allowed under this subchapter shall be equal to 20 percent of the total wages, up to a maximum of $10,000 in wages for each employee, paid or incurred by a person for services rendered by an employee of the person during the period beginning with the date the employee begins work for the person and ending on the first anniversary of that date.

(b) The refund claimed for a calendar year shall not exceed the amount of the net tax paid by the person to the State of Texas, after any other applicable tax credits in that calendar year.

§800.554. Eligibility.

A person is eligible for the refund for wages paid or incurred by the person, during each calendar year for which the refund is claimed, only in the following circumstances:

(1) The wages paid or incurred by the person are for services of an employee who is a:

(A) resident of this state; and

(B) recipient of:

(i) financial assistance or services in accordance with Texas Human Resources Code, Chapter 31; or

(ii) medical assistance in accordance with Texas Human Resources Code, Chapter 32;

(2) The person satisfies the certification requirements under §800.555 of this subchapter; and

(3) The person, under an arrangement under Texas Human Resources Code, §32.0422, provides and pays for the benefit of the employee a part of the cost of coverage under:

(A) a health plan provided by a health maintenance organization established under Texas Insurance Code, Chapter 843;

(B) a health benefit plan approved by the commissioner of insurance;

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 United States Code §§1001 et seq.); or

(D) a medical savings account or other health reimbursement arrangement authorized by law.

§800.555. Certification.

A person is not eligible for the refund of wages paid or incurred by the person unless the person has received a written certification from the Agency that the person's employee is a recipient of:

(1) financial assistance within the six months prior to his or her start date; or

(2) medical assistance within the six months prior to his or her start date.

§800.556. Application for Refund: Issuance.

(a) A person may apply for a tax refund voucher for wages paid an employee in a calendar year only on or after January 1 and before April 1 of the following calendar year.

(b) A person must submit an application for the tax refund voucher on a form promulgated by the Agency.

(c) On issuance of the tax refund voucher to the person by the Agency, the person may apply the voucher against a tax paid by the person to this state only for the calendar year for which the voucher is issued.

§800.557. Limitations.

(a) A person may only apply for a tax refund related to wages paid while the person's employee was covered by health care coverage in accordance with §800.554(3) of this subchapter and the cost of coverage was paid in full or in part by the person.

(b) A person may convey, assign, or transfer a refund under this subchapter to another person only if:

(1) the employing unit is sold, conveyed, assigned, or transferred, in the same transaction or in a related transaction, to the person to whom the refund is conveyed assigned, or transferred; or

(2) the person to whom the refund is conveyed, assigned, or transferred:

(A) is subject to a tax administered by the comptroller and deposited to the credit of the state General Revenue Fund without dedication; and

(B) directly or indirectly owns, controls, or otherwise directs, in whole or in part, an interest in the person from whom the refund is conveyed, assigned, or transferred.

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 August 9, 2022.

TRD-202202950
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 689-9855

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CHAPTER 819. [~~TEXAS WORKFORCE COMMISSION~~] CIVIL RIGHTS DIVISION

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12

Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §819.41

Subchapter E. Equal Employment Opportunity Deferrals, §819.73

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 819 is to implement House Bill (HB) 21 and Senate Bill (SB) 45, 87th Texas Legislature, Regular Session (2021), relating to sexual harassment complaints filed against employers. HB 21 expanded the statute of limitations for filing sexual harassment discrimination complaints and SB 45 broadened the definition of "Employer" as it relates to the filing of a sexual harassment discrimination complaint.

HB 21 amended Texas Labor Code, §21.202 to include a deadline for filing complaints alleging sexual harassment. Under new Texas Labor Code, §21.202(a-1), complaints must be filed with TWC within 300 days after the alleged sexual harassment occurred.

SB 45 amended Texas Labor Code, Chapter 21 by adding Subchapter C-1, §21.141 and §21.142, relating to Sexual Harassment. New Texas Labor Code, §21.141 defines "Employer" and "Sexual harassment" and new Texas Labor Code, §21.142 includes sexual harassment as an unlawful employment practice.

Texas Government Code, §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC conducted a rule review of Chapter 819 and any changes are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

TWC proposes the following amendment to the title of Chapter 819:

The Chapter 819 title is amended to remove "Texas Workforce Commission" for consistency with the titles of other chapters.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

TWC proposes the following amendments to Subchapter B:

§819.11. Definitions

Section 819.11 is amended to expand the definition of "Employer" to include provisions relating to sexual harassment, modify the definition of "Complaint" to include the statute of limitations to file a complaint for sexual harassment to within 300 days of the alleged unlawful employment practice, and add the definition of "Sexual Harassment."

§819.12. Unlawful Employment Practices

Section 819.12 is amended to add new subsection (k) to include sexual harassment as an unlawful employment practice.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

TWC proposes the following amendments to Subchapter D:

§819.41. Filing a Complaint

Section 819.41(e) is amended to include that a complaint alleging sexual harassment must be filed within 300 days of the alleged unlawful employment practice. Section 819.41(h) is amended to include if a perfected complaint alleging sexual harassment is not received within 300 days of the alleged unlawful employment practice, the respondent shall be notified that a complaint has been filed and the process of perfecting the complaint is in progress.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

TWC proposes the following amendments to Subchapter F:

§819.73. Deferral to Local Commission

Section 819.73(b)(2) is amended to expand jurisdiction over sexual harassment complaint allegations.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement HB 21 and SB 45, relating to sexual harassment complaints filed against employers.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC determined that during the first five years the rules will be in effect, they will not:

--create or eliminate a government program;

--require the creation or elimination of employee positions;

--require an increase or decrease in future legislative appropriations to TWC;

--require an increase or decrease in fees paid to TWC;

--create a new regulation;

--expand, limit, or eliminate an existing regulation;

--change the number of individuals subject to the rules; and

--positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Bryan Snoddy, Director, Civil Rights Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the pro-

posed rules will be to implement HB 21, which expanded the statute of limitations for filing sexual harassment discrimination complaints, and SB 45, which broadened the definition of "Employer" as it relates to filing a sexual harassment discrimination complaint.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the policy concept regarding these rule amendments to the Boards for consideration and review on February 11, 2022, and during the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

PART IV. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 26, 2022.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

40 TAC §819.11, §819.12

STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement HB 21 and SB 45, relating to sexual harassment complaints filed against employers.

§819.11. Definitions.

The following words and terms, when used in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bona fide occupational qualification--A qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no members of the excluded group would be able to satisfactorily perform the duties of the job with safety and efficiency.

(2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1976, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and Texas Labor Code, Chapter 21, regarding Employment Discrimination.

(3) Complaint--A written statement made under oath stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, and received within 180 days or, for a complaint alleging sexual harassment, within 300 days of the alleged unlawful employment practice.

(4) Conciliation--The settlement of a dispute by mutual written agreement in order to avoid litigation where a determination has been made that there is reasonable cause to believe an unlawful employment practice has occurred.

(5) Disability--A mental or physical impairment that substantially limits at least one major life activity of an individual, a record of such mental or physical impairment, or being regarded as having such an impairment as set forth in §3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas Labor Code, §21.002(6).

(6) Employer--A person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes an individual elected to public office in Texas or a political subdivision of Texas, or a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed. The term excludes a franchisor from being considered an employer of a franchisee or a franchisee's employees. The term also exempts the Texas Military Forces from being an employer, as claims of discrimination against the Texas Military Forces by service members on state active duty shall be processed in accordance with military regulations and procedures as authorized by Texas Government Code, §437.212. Exclusively regarding allegations of sexual harassment, the term "Employer" includes a person who employs one or more employees or acts directly in the interests of an employer in relation to an employee.

(7) Local commission--Created by one or more political subdivisions acting jointly, pursuant to Texas Labor Code, §21.152, and recognized as a Fair Employment Practices Agency by EEOC pursuant to Title VII of the [~~U.S.~~] Civil Rights Act of 1964, [~~Title VII,~~] §706, as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act of 1990, as amended.

(8) Mediation--An alternative dispute resolution process to resolve a dispute by mutual written agreement among the complainant, respondent, and CRD.

(9) Perfected complaint--An employment discrimination complaint that CRD has determined meets all of the requirements of Texas Labor Code, Chapter 21, and for which CRD will initiate an investigation.

(10) Sexual Harassment--An unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

(A) submission to the advance, request, or conduct is made a term or condition of an individual's employment either explicitly or implicitly;

(B) submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment;

(C) the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or

(D) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

§819.12. Unlawful Employment Practices.

(a) Discrimination by Employer. An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an individual of an employment opportunity or adversely affects in any other manner the status of an employee.

(b) Discrimination by Employment Agency. An employment agency commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual; or

(2) classifies or refers an individual for employment on that basis.

(c) Discrimination by Labor Organization. A labor organization commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership, or classifies or fails or refuses to refer for employment an individual in a manner that:

(A) deprives or tends to deprive an individual of any employment opportunity;

(B) limits an employment opportunity or adversely affects in any other manner the status of an employee or of an applicant for employment; or

(C) causes or attempts to cause an employer to violate this subchapter.

(d) Admission or Participation in Training Program. An employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it discriminates against an individual in admission to or participation in the program, unless a training or retraining opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order. The prohibition against discrimination based on age applies only to individuals who are at least 40 years of age.

(e) Retaliation. An employer, employment agency, or labor organization[,] commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age if the employer, employment agency, or labor organization retaliates or discriminates against an individual who:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

(f) Aiding or Abetting Discrimination. An employer, employment agency, or labor organization commits an unlawful employment practice if it aids, abets, incites, or coerces an individual to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age.

(g) Interference with the Agency or CRD. An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully interferes with the performance of a duty or the exercise of a power by CRD or by the Agency in relation to CRD.

(h) Prevention of Compliance. An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully obstructs or prevents an individual from complying with Texas Labor Code, Chapter 21, or a rule adopted or order issued under Texas Labor Code, Chapter 21.

(i) Discriminatory Notice or Advertisement. An employer, employment agency, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if it prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(2) concerns an employee's status, employment, or admission to or membership or participation in a labor organization or training or retraining program.

(j) Bona Fide Occupational Qualification. A bona fide occupational qualification is an affirmative defense to discrimination.

(k) Sexual Harassment. An employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors:

(1) knows or should have known that the conduct constituting sexual harassment was occurring; and

(2) fails to take immediate and appropriate corrective action.

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 August 9, 2022.

TRD-202202951
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 689-9855

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SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

40 TAC §819.41

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement HB 21 and SB 45, relating to sexual harassment complaints filed against employers.

§819.41. Filing a Complaint.

(a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD or a local commission office recognized by EEOC as a Fair Employment Practices Agency to obtain information on filing a complaint with CRD.

(b) At the complainant's request, CRD:

(1) shall confer with the complainant about the facts and circumstances that may constitute the alleged unlawful employment practice;

(2) shall assist the complainant in perfecting the complaint if the facts and circumstances appear to constitute an alleged unlawful employment practice; or

(3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful employment practice.

(c) The complaint shall be filed in writing and either signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form prescribed by Texas Civil Practice and Remedies Code, Chapter 132, or its successor statute. It may be filed with CRD by mail, electronic communication, fax, or in person with:

(1) the CRD office on a CRD-provided form;

(2) an EEOC office; or

(3) a local commission office recognized by EEOC as a Fair Employment Practices Agency.

(d) The complaint shall set forth the following information:

(1) Harm experienced by the complainant as a result of the alleged unlawful employment practice;

(2) Explanation, if any, given by the employer to the complainant for the alleged unlawful employment practice;

(3) A declaration of unlawful discrimination under federal or state law;

(4) Facts upon which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and

(5) Sufficient information to enable CRD to identify the employer, e.g., employer ID, business address, and business phone.

(e) A complaint shall be filed within 180 days or, for a complaint alleging sexual harassment, within 300 days, after the date on which the alleged unlawful employment practice occurred.

(f) A complaint may be withdrawn by a complainant only with the consent of the CRD director.

(g) A perfected complaint may be amended by the complainant to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful employment practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the perfected complaint to the respondent. An amended perfected complaint shall be subject to the procedures set forth in applicable law.

(h) A respondent shall be mailed a copy of the perfected complaint within 10 days after CRD receives the perfected complaint. If CRD receives a complaint that is not perfected within 180 days or, for a complaint alleging sexual harassment, within 300 days, of the alleged unlawful employment practice, CRD shall notify the respondent that a complaint has been filed and the process of perfecting the complaint is in progress.

(i) The complainant and respondent shall be advised upon request by CRD of the status of their perfected complaint, unless doing so would jeopardize an undercover investigation by another state, federal, or local government.

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 August 9, 2022.

TRD-202202952
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 689-9855

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SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

40 TAC §819.73

The rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule implements HB 21 and SB 45, relating to sexual harassment complaints filed against employers.

§819.73. Deferral to Local Commission.

(a) Texas Labor Code, §21.155 grants to a local commission the exclusive right to take appropriate action within the scope of its power and jurisdiction to process a complaint deferred by CRD pursuant to the requirements of Texas Labor Code, §21.155, and this chapter.

(b) CRD shall not assume jurisdiction over a complaint deferred to a local commission, pursuant to Texas Labor Code, §21.155, except:

(1) where the local commission defers a complaint under its jurisdiction to CRD;

(2) where the complaint is received by CRD within 180 days of the alleged violation or, for a complaint alleging sexual harassment, within 300 days of the alleged unlawful employment practice, but beyond the period of limitation of the appropriate local commission; and

(3) where the local commission has not acted on the complaint pursuant to the requirements of Texas Labor Code, §21.155(c), and this chapter.

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 August 9, 2022.

TRD-202202953

Les Trobman
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Earliest possible date of adoption: September 25, 2022
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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §§217.54, 217.55, and 217.184 concerning the registration of vehicles as part of certain county fleets. The amendments are necessary to implement new Transportation Code §502.0025 and amendments to §502.453, which authorize registration of an exempt county fleet for an extended period, under Senate Bill 1064 (SB 1064), 87th Legislature, Regular Session (2021). The amendments also update §217.54 and §217.55 to remove obsolete terms and conform the rules to current practices.

EXPLANATION. SB 1064 added new Transportation Code §502.0025 and amended §502.453 to allow exempt county fleets to be registered for an extended period of not less than one year or more than eight years. Section 502.0025 defines an "exempt county fleet" as a group of two or more nonapportioned motor vehicles, semitrailers, or trailers that is owned by and used exclusively in the service of a county with a population of 3.3 million or more. Currently only Harris County is eligible to register vehicles under an exempt county fleet as defined by §502.0025. Proposed amendments in §§217.54, 217.55, and 217.184 incorporate the newly defined exempt county fleets into existing commercial fleet and exempt registration to implement processes for the extended registration requirements in SB 1064.

SB 1064 directs the department to establish rules regarding the suspension of the county fleet's registration if the owner fails to comply with Transportation Code §502.0025 or rules adopted under that section and to enforce inspection requirements. Proposed amendments to §217.55(e) establish the penalty associated with failing to maintain compliance with Transportation Code §502.0025, the rules adopted under that section, and inspection requirements.

The proposed amendments to §217.54 include changes that provide increased clarity and readability regarding the department's existing practices.

The following paragraphs address the amendments in this proposal.

The amendments to §217.54(e), (f), and (i)(6)(B) replace the term "insignia" with "metal fleet license plate" and "registration receipt" to conform with current department operations. Fleet license plates and registration receipts are issued to commercial fleet registrants rather than registration insignia, under Transportation Code §502.0023. The amendments remove §217.54(e)(2) and (e)(3) as those requirements apply only to insignia, making them unnecessary when insignia are not used. The amendments also renumber existing §217.54(e)(4) and (e)(5) accordingly.

The amendments to §217.54(f)(2) and (3) and (i)(6)(B) add the option of providing the department with acceptable proof that the metal fleet license plates have been destroyed when the registered vehicle has been removed from the fleet or when the registration has been canceled.

The amendments to §217.55(a)(2)(A)(iii) change the manner in which an application for exempt registration provides the required statement "that the vehicle is owned or under the control of and will be operated by the exempt agency." The amendment requires the statement to be a certification instead of the currently required affidavit. The change conforms the rule to the department's current practices.

The amendments to §217.55(a)(3)(D) remove the reference to an exempt plate being marked with a replacement date because license plates no longer have an assigned replacement interval.

New §217.55(e) establishes rules necessary to implement the extended registration allowed under Transportation Code §502.0025, including (i) rules regarding the suspension of an exempt county fleet's registration for failure to comply with the law or adopted rules and (ii) establishing a method to enforce the inspection requirements under Chapter 548 for motor vehicles, semitrailers, and trailers registered under the section. Because the exempt county fleet statute (Transportation Code §502.0025) largely mirrors the commercial fleet statute (Transportation Code §502.0023), new §217.55(e) also largely mirrors the existing commercial fleet rule (§217.54).

New §217.55(e) allows an exempt county fleet to be registered for annual increments of up to eight years; and requires that a registered vehicle be titled, unless exempt by statute from titling. New §217.55(e)(1) - (e)(4) establish application requirements and requirements related to registration receipts and exempt fleet license plates. New §217.55(e)(5) establishes requirements related to adding or removing a vehicle from an exempt county fleet. New §217.55(e)(6) establishes procedures for paying the state's portion of the vehicle inspection fee. New §217.55(e)(7) allows for the cancellation of a registration for noncompliance with the exempt fleet statutes and rules or with inspection requirements under Transportation Code Chapter 548 and prohibits a vehicle with canceled registration from operating on a public highway. New §217.55(e)(8) and §217.55(e)(9) establish procedures for reinstating a canceled registration and for requesting a replacement license plate.

The amendment to §217.184(3) specifies that exempt county fleets are excluded from the processing and handling fee requirements under §217.183. The amendment to §217.184(3) is necessary to implement SB 1064's amendments to Transportation Code §502.453.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that in the first five years the proposed amendments will be in effect, there will be a one-time technology implementation cost of $250,000 in the first year to implement programming for the department's automated systems. This amount is appropriated to the department in Section 48 of House Bill 2, 87th Legislature, Regular Session (2021). Vehicles in an exempt county fleet will be registered directly through a department system which could result in minor reductions in workloads for county tax assessor-collector offices but any effect from this is expected to be negligible. Therefore, there is no fiscal impact to the state or lo-

cal governments as a result of the enforcement or administration of the proposal.

Jimmy Archer, Director of the Motor Carrier Division, and Roland D. Luna, Sr., Deputy Executive Director, have determined that there will be no measurable effect on local employment or the local economy as a result of the proposal, because the overall number of registrations will not be affected.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer and Mr. Luna have also determined that for each year of the first five years the proposed amendments are in effect, the public benefits include establishing rules to implement SB 1064 and the option it creates for owners of an exempt county fleet to register vehicles for an extended period. Other amendments remove obsolete text that may be confusing to readers and conform the rules to current practices.

Mr. Archer and Mr. Luna anticipate that there will be no additional costs on a regulated person to comply with these amendments because the amendments do not establish any additional requirements on a regulated person beyond the requirements under statute. There will be a small reduction in costs on a regulated person because the amendments will no longer require the application to include a notarized affidavit regarding the control and operation of the vehicle, and instead will require only a certification.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amendments will not have an adverse economic or financial effect on small businesses, micro-businesses, or rural communities because the amendments to implement SB 1064 apply only to a local government with a population of more than 3.3 million. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, the proposed amendments:

-- 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 department;

-- will not require an increase or decrease in fees paid to the department;

-- will create new regulation;

-- will not expand existing regulations;

-- will not increase or decrease the number of individuals subject to the rule's applicability; and

-- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 26, 2022. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.54, §217.55

STATUTORY AUTHORITY. The department proposes amendments to §§217.54, 217.55, and 217.184 under Transportation Code §§502.0021, 502.0023, 502.0025, and 1002.001.

-- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

-- Transportation Code §502.0023 requires the department to adopt rules to implement extended registration of commercial fleet vehicles.

-- Transportation Code §502.0025 requires the department to adopt rules to implement extended registration of certain county fleet vehicles.

-- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§502.0023, 502.0025, and 502.453.

§217.54. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles[~~, including trailers and semitrailers,~~] in a fleet instead of registering each vehicle separately. A fleet may include trailers and semitrailers. Except as provided by §217.55 of this title (relating to Exempt and Alias Vehicle Registration), to consolidate registration, a registration must meet the requirements of this section. [~~This section prescribes the policies and procedures for fleet registration.~~]

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than 25 vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Registration receipt and fleet license plates [~~Insignia~~].

(1) As evidence of registration, the department will issue a registration receipt and one or two metal fleet license plates [~~distinguishing insignia~~] for each vehicle in a fleet.

[~~(2) The insignia shall be included on the license plate and affixed to the vehicle.~~]

[~~(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.~~]

(2) [~~(4)~~] The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel upon request.

(3) [~~(5)~~] A registration receipt or fleet license plate [~~Insignia~~] may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued one or two metal fleet license plates and a registration receipt [~~insignia~~].

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. After a vehicle is removed from the fleet, the [~~The~~] fleet registrant shall either return the metal fleet license plates [~~registration insignia~~] for that vehicle to the department or provide the department with acceptable proof that the metal fleet license plates for that vehicle have been destroyed. [~~at the time the vehicle is removed from the fleet.~~] Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below 25 during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below 25 at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately either return all metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed. [~~registration insignia to the department.~~]

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(4) In addition to the registration fees prescribed by Transportation Code, Chapter 502, an owner registering a fleet under this section must pay a one-time fee of $10 per motor vehicle, semitrailer, or trailer in the fleet. This fee is also due as follows:

(A) for each vehicle added to the owner's existing fleet; and

(B) for each vehicle that a buyer registers as a fleet, even though the seller previously registered some or all of the vehicles as a fleet under this section.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle on the anniversary date of the registration if the fleet vehicle [~~that~~] is not in compliance with the inspection requirements under Transportation Code, Chapter 548 or the inspection requirements in the rules of [~~and~~] the Texas Department of Public Safety [~~rules regarding inspection requirements on the anniversary date(s) of the registration~~].

(3) A vehicle with a canceled [~~cancelled~~] registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department canceled [~~cancelled~~] the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration canceled [~~cancelled~~] under paragraph (2) of this subsection, paying an administrative fee in the amount of $10.

(5) A registrant is [~~only~~] eligible for reinstatement of the registration only within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a canceled [~~cancelled~~] vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately either return the metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed. [~~registration insignia to the department.~~]

(j) Inspection fee. The registrant must pay the department by the deadline listed in the department's invoice for the state's portion of the vehicle inspection fee.

§217.55. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.453 or §502.456, certain vehicles owned by and used exclusively in the service of a governmental agency, owned by a commercial transportation company and used exclusively for public school transportation services, designed and used for fire-fighting or owned by a volunteer fire department and used in the conduct of department business, privately owned and used in volunteer county marine law enforcement activities, used by law enforcement under an alias for covert criminal investigations, owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operations, or owned or leased by a non-profit emergency medical service provider are [~~is~~] exempt from payment of a registration fee and are [~~is~~] eligible for exempt plates.

(2) Application for exempt registration.

(A) Application. An application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) a certification [~~an affidavit executed~~] by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet, unless the applicant complies with the requirements under this section for each vehicle that is exempt by law from the inscription requirements.

(B) Emergency medical service vehicle.

(i) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.456.

(ii) A copy of an emergency medical service provider license issued by the Department of State Health Services must accompany the application.

(C) Fire-fighting vehicle. The application for exempt registration of a fire-fighting vehicle or vehicle owned privately by a volunteer fire department and used exclusively in the conduct of department business must contain the vehicle description, including a description of any fire-fighting equipment mounted on the vehicle if the vehicle is a fire-fighting vehicle. The certification [~~affidavit~~] must be executed by the person who has the proper authority and shall state either:

(i) the vehicle is designed and used exclusively for fire-fighting; or

(ii) the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business.

(D) County marine law enforcement vehicle. The application for exempt registration of a privately-owned vehicle used by a volunteer exclusively in county marine law enforcement activities, including rescue operations, under the direction of the sheriff's department must include a statement signed by a person having the authority to act for a sheriff's department verifying that fact.

(E) United States Coast Guard Auxiliary vehicle. The application for exempt registration of a vehicle owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operation, including search and rescue, emergency communications, and disaster operations, must include a statement by a person having authority to act for the United States Coast Guard Auxiliary that the vehicle or trailer is used exclusively in fulfillment of an authorized mission of the United States Coast Guard or Coast Guard Auxiliary, including search and rescue, emergency communications, or disaster operations.

(F) Motor vehicles owned and used by state-supported institutions. If the applicant is exempt from the inscription requirements under Education Code §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code §51.932.

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code,

§721.003. The applicant must also provide a citation to the section that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005 the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

~~[(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932. Exempt plates will be marked with the replacement year.]~~

(b) Affidavit for issuance of exempt registration under an alias.

(1) On receipt of an affidavit for alias exempt registration, approved by the executive administrator of an exempt law enforcement agency, the department will issue alias exempt license plates for a vehicle and register the vehicle under an alias for the law enforcement agency's use in covert criminal investigations.

(2) The affidavit for alias exempt registration must be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of the executive administrator or the executive administrator's designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator.

(5) The affidavit for alias exempt registration must be accompanied by a title application under §217.103 of this title (relating to Restitution Liens). The application must contain the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If a metal exempt [~~an exempt metal~~] license plate is lost, stolen, or mutilated, a properly executed application for metal exempt [~~metal~~] license plates must be submitted to the county tax assessor-collector.

(2) An application for replacement metal exempt [~~metal~~] license plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle have been lost, stolen, or mutilated and will not be used on any other vehicle.

(d) Title requirements. Unless exempted by statute, a vehicle must be titled at the time the exempt registration is issued.

(e) Extended Registration of County Fleet Vehicles.

(1) Subsections (a)(2), (a)(3)(B), and (c) of this section do not apply under this subsection.

(2) The owner of the exempt county fleet must file a completed application for exempt county fleet registration on a form prescribed by the department, and shall contain the following information:

(A) vehicle description;

(B) name of the exempt agency;

(C) a certification by an authorized person stating that the vehicle is owned by and used exclusively in the service of the county;

(D) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet, unless the applicant complies with the requirements under this section for each vehicle that is exempt by law from the inscription requirements; and

(E) designation of a single registration period for the fleet to ensure that the registration period for each vehicle will expire on the same last day of a calendar month.

(3) The application for exempt county fleet registration must be accompanied by the state's portion of the vehicle inspection fees.

(4) As evidence of registration, the department will issue a registration receipt and one or two metal exempt fleet license plates for each vehicle in the exempt county fleet. The registration receipt for each vehicle must be carried in that vehicle at all times and be made available to law enforcement personnel upon request. The registration receipt and exempt fleet license plates may not be transferred between vehicles, owners, or registrants.

(5) An owner may add or remove a vehicle from an exempt county fleet at any time during the registration period. An added vehicle will be given the same registration period as the other vehicles in the exempt county fleet and will be issued a registration receipt and one or two metal exempt fleet license plates. Upon the removal of a vehicle from the exempt county fleet, the owner of the vehicle shall dispose of the registration receipt and shall either return the metal exempt fleet license plates to the department or provide the department with acceptable proof that the metal exempt fleet license plates have been destroyed.

(6) An owner must pay the department by the deadline listed in the department's invoice for the state's portion of the vehicle inspection fee. Payment shall be made in the manner prescribed by the department.

(7) The department may cancel registration on an exempt county fleet or any vehicle in an exempt county fleet on the anniversary date of the registration if the vehicle is not in compliance with Transportation Code §502.0025, this subsection, the inspection requirements under Transportation Code Chapter 548, or the inspection requirements in the rules of the Texas Department of Public Safety. A vehicle with a canceled registration may not be operated on a public highway.

(8) If the department cancels the registration of a vehicle in an exempt county fleet under paragraph (7) of this subsection, the owner may request that the department reinstate the registration. To request reinstatement, the owner must comply with the requirements that led the department to cancel the registration and must provide the department with notice of compliance on a form prescribed by the department. An owner is eligible for reinstatement of the registration of a vehicle in an exempt county fleet if the department receives the owner's request for reinstatement and proof of compliance no later than 90 cal-

endar days after the date of the department's notice of cancellation. If the department does not timely receive an owner's request to reinstate the registration, the owner must immediately do the following:

(A) either return all metal exempt county fleet license plates to the department or provide the department with acceptable proof that the metal exempt county fleet license plates have been destroyed; and

(B) dispose of the registration receipt in a manner prescribed by the department.

(9) If a metal exempt county fleet license plate is lost, stolen, or mutilated, the owner may request a new metal exempt county fleet license plate from the department. The request must include the following:

(A) a certification that the previously issued metal exempt county fleet license plate furnished for the vehicle has been lost, stolen, or mutilated and that the new metal exempt county fleet license plate will not be used on any other vehicle;

(B) the vehicle description; and

(C) the original license plate number, if applicable.

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

Filed with the Office of the Secretary of State on August 11, 2022.

TRD-202203001
Elizabeth Brown Fore
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 465-4160

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SUBCHAPTER I. FEES

43 TAC §217.184

STATUTORY AUTHORITY. The department proposes amendments to §§217.54, 217.55, and 217.184 under Transportation Code §§502.0021, 502.0023, 502.0025, and 1002.001.

-- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

-- Transportation Code §502.0023 requires the department to adopt rules to implement extended registration of commercial fleet vehicles.

-- Transportation Code §502.0025 requires the department to adopt rules to implement extended registration of certain county fleet vehicles.

-- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§502.0023, 502.0025, and 502.453.

§217.184. Exclusions.

The following transactions are exempt from the processing and handling fee established by §217.183 of this title (relating to Fee Amount), but are subject to any applicable service charge set pursuant to Government Code, §2054.2591, Fees. The processing and handling fee may not be assessed or collected on the following transactions:

(1) a replacement registration sticker under Transportation Code, §502.060;

(2) a registration transfer under Transportation Code, §502.192;

(3) an exempt registration under Transportation Code, §502.451 or §502.0025;

(4) a vehicle transit permit under Transportation Code, §502.492;

(5) a replacement license plate under Transportation Code, §504.007;

(6) a registration correction receipt, duplicate receipt, or inquiry receipt;

(7) an inspection fee receipt; or

(8) an exchange of license plate for which no registration fees are collected.

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 August 11, 2022.

TRD-202203002
Elizabeth Brown Fore
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: September 25, 2022
For further information, please call: (512) 465-4160

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