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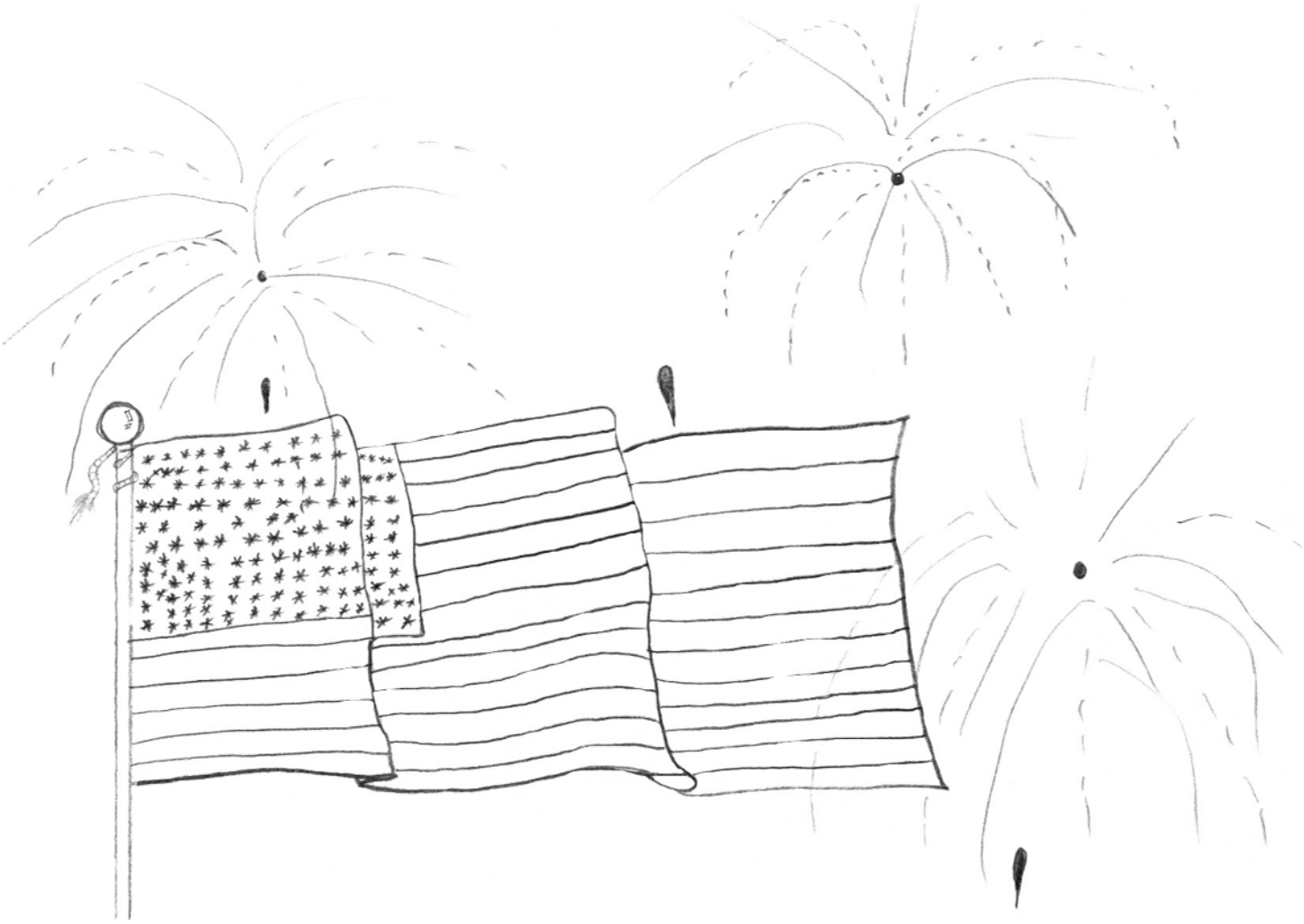

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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In This Issue

PROPOSED RULES

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

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

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

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

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

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

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.7

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 1, Subchapter A, §1.7, Staff Appeals Process. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.7. Staff Appeals Process.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802925
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.7

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC, Chapter 1, Subchapter A, §1.7, Appeals Process. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code, §2161.003, add the purpose and statutory authority for the rule, clarify the exclusion of multifamily programs from the rule, make changes within the definitions section, improve the definition for an Affiliated Party, add a section for Persons Eligible to Appeal which statute requires be in the rule and had not been previously, revise the Grounds for Appeal section to provide for a broader set of grounds for appeal, improve the clarity and wording in the two Process sections, provide clear language on what the Board's decision option may be, clarify the language regarding the han-

dling of a granted appeal that had been related to awards, and specify that appeals may still have an opportunity to be re-heard by the Board in certain circumstances.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that is consistent with program administration at the Department and improved clarity of the rules. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§1.7. Staff Appeals Process.

(a) Purpose. The purpose of this rule is to provide the procedural steps by which an appeal can be filed relating to Department decisions as authorized by Tex. Gov't Code §2306.0321 and §2306.0504 which together require an appeals process be adopted by rule for the handling of appeals relating to Department decisions and debarment. Appeals relating to low income housing tax credits, multifamily mortgage revenue bonds, multifamily loans, and their associated underwriting are governed by a separate appeals process provided at §10.902 of this Title (relating to Appeals Process (§2306.0321; §2306.6715)).

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. If not defined below, Capitalized terms used in this section have the meaning in the rules that govern the applicable program under which the appeal is being filed.

(1) Affiliated Party--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(2) Appeal--An Appealing Party's notice to challenge a decision or decisions made by staff and/or the Executive Director regarding an Application, Commitment, Contract, Loan Agreement, Debarment, or LURA as governed by this section.

(3) Appeal file--The written record of an Appeal that contains the applicant's Appeal; the correspondence, if any, between Department staff or the executive director and the Appealing Party; and the final Appeal decision response provided to the Appealing Party.

(4) Appealing Party--The Administrator, Affiliated Party, Applicant, Person, or Responsible Party Subchapter D, §2.401 of this Title (relating to Debarment from Programs Administered by the Department) who files, intends to file, or has filed on their behalf, an Appeal before the Department.

(c) Persons Eligible to Appeal. An Appeal may be filed by any Administrator, Applicant, Person, or Responsible Party as provided for in Subchapter D, §2.401 of this Title, or Affiliated Party of the Administrator, Applicant, Person or Responsible Party who has filed an Application for funds or reservation with the Department, or has received funds or a reservation from the Department to administer.

(d) Grounds to Appeal Staff Decision. Appeals may be filed using this process on the following grounds:

(1) Relating to applying for funds or requesting to be approved for reservation authority an Appealing Party may appeal if there is:

(A) disagreement with the determination of staff regarding the sufficiency or appropriateness of documents submitted to satisfy evidence of a given threshold or scoring criteria, including the calculation of any scoring based items;

(B) disagreement with the termination of an application;

(C) disagreement with the denial of an award or reservation request;

(D) disagreement with the amount of the award recommended by the Department, unless that amount is the amount requested by the Applicant;

(E) concern that the documents submitted were not processed by Department staff in accordance with the Application and program rules in effect; and/or

(F) a determination by the Board or the Executive Director that there is good cause for an Appeal because there are implicated interests to be protected by due process.

(2) Relating to issues that arise after the award or reservation determination by the Board, an Appealing Party may appeal if there is:

(A) disagreement with a denial by the Department of a Contract, Commitment, Loan Agreement, or LURA amendment that was requested in writing; or

(B) a determination by the Board or the Executive Director that there is good cause for an Appeal because there are implicated interests to be protected by due process.

(3) Relating to debarment a Responsible Party may appeal a determination of debarment, as further provided for in §2.401(k) of this Title.

(4) Affiliated Party Appeals. An Affiliated Party has the ability to appeal only those decisions that directly impact the Affiliated Party, not the underlying agreements. An Affiliated Party may appeal a finding of failure to adequately perform under an Administrator's Contract, resulting in a "Debarment" or a similar action.

(e) Process for Filing an Appeal of Staff Decision to the Executive Director.

(1) An Appealing Party must file a written Appeal of a staff decision with the Executive Director not later than the seventh calendar day after notice has been provided to the Appealing Party. For purposes of this section, posting of materials or logs on the Department's website is considered "notice" when identified as such in the application process as a public notification mechanism.

(2) The written appeal must include specific information relating to the disposition of the Application or written request for change to the Contract, Commitment, Loan Agreement, and/or LURA. The Appealing Party must specifically identify the grounds for the Appeal based on the disposition of underlying documents.

(3) Upon receipt of an Appeal, Department staff shall prepare an Appeal file for the Executive Director. The Executive Director shall respond in writing to the Appealing Party not later than the fourteenth day after the date of receipt of the Appeal. The Executive Director may take one of the following actions.

(A) Concur with the Appeal and make the appropriate adjustments to the staff's decision; or

(B) Disagree with the Appeal, in concurrence with staff's original determination, and provide the basis for rejecting the Appeal to the Appealing Party.

(f) Process for Filing an Appeal of the Executive Director's Decision to the Board.

(1) If the Appealing Party is not satisfied with the Executive Director's response to the Appeal provided in subsection (e)(3) of this section, they may appeal in writing directly to the Board within seven days after the date of the Executive Director's response.

(2) In order to be placed on the agenda of the next scheduled meeting of the Department's Board, the Appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals requested under this section received after the fourteenth calendar day prior to the Board meeting will generally be scheduled at the next subsequent Board meeting. However, the Department reserves the right to place the Appeal on a Board meeting agenda if an Appeal that is timely filed under paragraph (1) of this subsection is received fewer than fourteen calendar days prior to the next scheduled Board meeting. The Executive Director shall prepare Appeal materials for the Board's review based on the information provided.

(3) If the Appealing Party receives additional information after the Executive Director has denied the Appeal, but prior to the posting of the Appeal for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the Applicant after the written Appeal. New information will cause the deadlines in this subsection to begin again. The Board will review the Appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(4) Public Comment on an Appeal Presented to the Board. The Board will hear public comment on the Appeal under its Public Comment Procedures in §1.10 of this Subchapter (relating to Public Comment Procedures). While public comment will be heard, persons making public comment are not parties to the Appeal and no rights accrue to them under this section or any other Appeal process. Nothing in this section provides a right to Appeal any decision made on an Application, Commitment, Contract, Loan Commitment, or LURA if the Appealing Party does not have grounds to appeal as described in subsection (d) of this section.

(5) In the case of possible actions by the Board regarding Appeals, the Board may:

(A) Concur with the Appealing Party and grant the Appeal; or

(B) Disagree with the Appealing Party, in concurrence with the Executive Director's original determination, and provide the basis for rejecting the Appeal.

(C) In instances in which the Appeal, if granted by the Board would have resulted in an award to the Applicant, the Application shall be evaluated for an award as it relates to the availability of funds and staff will recommend an action to the Board in the meeting at which the Appeal is heard, or a subsequent meeting. If no funds are available in the current year's funding cycle, then the Appealing Party may be awarded funds from a pool of deobligated funds or other source, if available.

(D) In the case of actions regarding all other Appeals, the Board shall direct staff on what specific remedy is to be provided, allowable under current laws and rules.

(g) Board Decision. Appeals not submitted in accordance with this section will not be considered, unless the Executive Director or Board, in the exercise of its discretion, determines there is good cause to consider the appeal. The decision of the Board is final unless the Board determines within 45 days of a Board decision that it has erred in fact or law in its determination, in which case an Appeal may be reconsidered by the Board on a motion by a party to the Appeal or the Department.

(h) Limited Scope. The appeals process provided in this rule is of general application. Any statutory or specific rule with a different appeal process will be governed by the more specific statute or rule. Except as provided for in §2.401 of this Title, this section does not apply to matters involving a Contested Case Proceeding under §1.13 of this subchapter (relating to Contested Case Hearing Procedures).

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802918

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.8

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 1, Subchapter A, §1.8, Board Appeals Process. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation that is no longer necessary;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.8. Board Appeals Process.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802926
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 1018
For further information, please call: (512) 475-1762

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10 TAC §1.10

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 1, Subchapter A, §1.10, Public Comment Procedures. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.10. Public Comment Procedures.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802927
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.10

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC, Chapter 1, Subchapter A, §1.10, Public Comment Procedures. The purposes of the proposed new section are to provide compliance with Tex. Gov't Code §2161.003, clarify the use of handouts and large-size displays at Board meetings during public comment, provide for the Board to have the ability to place reasonable limitations on comment, provide for the requirement that the speaker must sign in, and make other revisions to readability and clarity.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that provides for clear guidelines for public dialogue with the Department's Board and improves the clarity of the rules. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

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

§1.10. Public Comment Procedures.

(a) Purpose. The purpose of this section is to establish procedures for hearing public comments at Governing Board meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov't Code.

(b) Procedures for taking public comment.

(1) At each meeting open to the public the Governing Board ("Board") shall provide opportunity for members of the public to make:

(A) general public comment after the Board has taken action on all posted agenda items on which it intends to take action, general public comment on matters of relevance to the Department's business or requests that the Board place specific items on future agendas for consideration. It is the prerogative of the Board Chair to place reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this section; and

(B) specific public comment on each posted agenda item after the presentation made by Department staff and motions made by the Board. For purposes of this rule, the Board may consider the staff's presentation to be staff's written presentation in the Board's meeting book and posted on the Department's website. It is the prerogative of the Board Chair to place reasonable limits on such comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this section.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item or for or against any pending application. The opportunity for any such testimony is to be limited to the appointed time when action on such matter is requested to be formally considered as a posted agenda item.

(3) At the time general or specific public comment is taken, speakers should be prepared to come promptly to the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak. If a large number of speakers wish to testify, the chair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they must state on the record their name and on whose behalf they are speaking, and sign in on a sheet provided by staff to indicate the correct spelling of their name and on whose behalf they are speaking.

(4) Individuals not speaking who wish to register positions for or against a posted agenda item may register their positions, for or against, with the secretary of the meeting, or another person designated by the chair, on a form, which the person wishing to register must sign, stating their name, whom they represent, the action item to which their comment relates, and their position. At the end of the public comment on the item the chair will have registered positions for and against read into the record.

(5) Additional limits on public comment.

(A) The Board Chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

(i) the number of persons wishing to give public comment;

(ii) the number of agenda items to be heard;

(iii) the time available for the meeting; and

(iv) the risk of losing a quorum of Board members.

(B) If the Board Chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The Board Chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances.

(6) Presenting printed materials. An individual providing testimony to the Board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the Board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five (5) business days prior to the meeting at which they are to be used. This is to enable staff to post them on the Department's website not later than the third day before the date of the meeting, as provided for in Tex. Gov't Code §2306.032(c). They must be made available in Adobe Acrobat (pdf) electronic format;

(B) Department staff will post such materials to the Department's website no later than the third day before the meeting at which they are to be used;

(C) In exceptional circumstances the Board Chair may, in her/his sole discretion, and only after giving Board members an opportunity to object, allow materials to be provided at a meeting in hard copy format provided:

(i) they are delivered to staff prior to the start of the meeting so that staff may log in the materials and the Board Chair may review for acceptance under this subsection. Materials may not be handed directly by the public to a Board member on the dais;

(ii) they are not so voluminous as to cause inordinate delay while members of the Board and public review them;

(iii) they are provided in hard copy format to all members of the public in attendance;

(iv) they are also provided to staff in Adobe Acrobat (pdf) format for inclusion in the electronic records of Board materials available to the public via the Department's website; and

(v) if the materials involve large size photos, maps, charts, or other information to be displayed for the Board, an identical copy must be displayed to the public attendees.

(7) Persons seeking allowance of written materials under paragraph (6)(C) of this subsection should be aware that their proffered materials may be disallowed, and they should always be prepared to proceed with a verbal presentation within the time constraints for public speaking at Board meetings.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802919
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

10 TAC §1.12

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC, Chapter 1, Subchapter A, §1.12, Negotiated Rulemaking. The purposes of the proposed new section are to provide compliance with Tex. Gov't Code §2306.082 and Chapter 2008, to provide greater clarity by considering the issue of Negotiated Rulemaking separately from that of Alternative Dispute Resolution, and to make minor changes for clarity, improved readability and corrected citations.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that provides for clear guidelines for the Department's negotiated rulemaking procedures. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

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

§1.12. Negotiated Rulemaking.

(a) Purpose. In accordance with Tex. Gov't Code §2306.082, the Department encourages the use of negotiated rulemaking procedures for the adoption of Department rules. Tex. Gov't Code Chapter 2008 describes the procedures for negotiated rulemaking including appointment of a convener; publishing notice of proposed negotiated rulemaking and requesting comments on the proposal; appointing a negotiated rulemaking committee; appointing an impartial third party facilitator; and proposing the resulting draft rule for public comment.

(b) Request for Negotiated Rulemaking Process.

(1) Any person or organization that would like for the Department to use negotiated rulemaking for the adoption of a Department rule may submit such a request to the Department's Board Secretary. The proposal must identify: the rule proposed for negotiated rulemaking, potential participants for the negotiated rulemaking committee, possible third party facilitators, and a suggested timeline for the process. The Department may also on its own propose to use negotiated rulemaking.

(2) In determining whether a proposed negotiated rulemaking is appropriate in a particular situation, the Department and interested parties may consider any relevant factors, including:

(A) The number of identifiable interests that would be significantly affected by the proposed rule;

(B) The probability that those interests would be adequately represented in a negotiated rulemaking;

(C) The probable willingness and authority of the representatives of affected interests to negotiate in good faith;

(D) The probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule;

(E) The probability that negotiated rulemaking will not unreasonably delay notice and eventual adoption of the proposed rule;

(F) The adequacy of agency and public resources to participate in negotiated rulemaking; and

(G) The probability that the negotiated rulemaking committee will provide a balanced representation among all interested and affected parties. (Tex. Gov't Code §2008.052(d)).

(3) The Department generally will respond to the request within seven calendar days. If the negotiated rulemaking is not pursued, the Department will provide the party making the request with an explanation for the basis of the decision.

(c) If the Department decides to proceed with a negotiated rulemaking, it shall follow the process outlined in Tex. Gov't Code Chapter 2008 and costs associated with the negotiated rulemaking process will be handled as specified in Tex. Gov't Code §2008.003.

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

Filed with the Office of the Secretary of State on July 2, 2018.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.13

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 1, Subchapter A, §1.13, Contested Case Hearing Procedures. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.13. Contested Case Hearing Procedures.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802928
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.13

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC, Chapter 1, Subchapter A, §1.13, Contested Case Hearing Procedures. The purposes of the proposed new section are to provide compliance with Tex. Gov't Code §2161.003, clarify the steps that initiate a hearing, provide for a timeframe within which the Department will refer a case to the State Office of Administrative Hearings, and make other revisions for readability and clarity.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that provides for clear guidelines for the handling of contested case hearings with the Department and improves the clarity of the rules. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

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

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

§1.13. Contested Case Hearing Procedures.

(a) Purpose. The purpose of this section is to provide procedures for contested case hearings. This section does not apply to matters such as appeals to the Board of staff decisions or waivers, and this section does not in itself create any right to a contested case hearing but merely provides a process for contested case hearings that are otherwise expressly provided for by law or rule.

(b) SOAH Designation. The Governing Board (the "Board") of the Texas Department of Housing and Community Affairs (the "Department") designates the State Office of Administrative Hearings ("SOAH") to hold all contested case hearings on the Board's behalf.

(c) Initiation of Hearing.

(1) Upon receipt of a pleading or other document that is intended to initiate a contested case proceeding before the Department, the Department shall determine if a contested case hearing is indicated under the relevant statutory provisions and rules and, if so, will mark the file as a pending proceeding and refer the matter to SOAH for hearing generally within 45 calendar days, or such other lesser time as an applicable state or federal statute, rule, or regulation may require. The Department will notify the opposing party of any delay.

(2) SOAH shall acquire jurisdiction over a case when the Department completes and files a Request to Docket Case form or other form acceptable to SOAH, together with the notice of report to the Board required under Tex. Gov't Code §2306.043 or other pertinent documents giving rise to the case. Once SOAH acquires jurisdiction, all subsequent documents created, sent, or received in connection with the proceeding that SOAH requires to be filed with it are to be filed with SOAH, with appropriate service upon the opposing party in accordance with this chapter and the rules of SOAH.

(3) Except upon a showing of good cause or as an applicable statute or federal regulation may require, all contested case hearings in which the Department is a party shall be held at the offices of SOAH located in Austin, Texas.

(4) Nothing in this subchapter shall in any way limit, alter, or abridge the ability of the Department to enter into mediation or alternative dispute resolution at any time prior to or after the holding of the administrative hearing but prior to the adoption by the Board of a final order.

(d) Service of Notice of Hearing, Pleadings and Other Documents on Parties.

(1) Service of a notice of hearing shall be made by hand delivery, regular first class mail or certified mail to the party's last known address as shown on the Department's records, in accordance with §1.22 of this Chapter (relating to Providing Contact Information to the Department).

(2) Service of pleadings and other documents shall be made in any manner provided for in SOAH rules.

(e) Proposal for Decision.

(1) After the conclusion of a hearing, the Administrative Law Judge ("ALJ") shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law, as modified by the ALJ's addressing of any exceptions and replies to exceptions timely filed with the ALJ in accordance with Tex. Gov't Code §2001.062 and SOAH rules. The Executive Director shall place the proposal for decision and a proposed final order on the Board's agenda for discussion and possible action at a subsequent meeting of the Board.

(2) At a meeting of the Board where the proposed final order may be adopted, parties may provide testimony based on the record only, for changes to the proposal for decision or the proposed final order. No new evidence shall be submitted at the Board meeting. The Board may, on its own motion, remand to SOAH for any additional fact finding it determines is necessary, or, the Board may change a finding of fact or conclusion of law made by the ALJ, but only for reasons stated in Tex. Gov't Code §2001.058(e). The Board may adopt a final order if it finds that the findings of fact and conclusions of law are supported by the evidence. Motions for rehearing may be filed and served in accordance with the Tex. Gov't Code Chapter 2001 and the rules of SOAH.

(f) Disposition of Contested Cases on a Default Basis.

(1) In contested cases where the party not bearing the burden of proof at the hearing fails to appear, the ALJ may issue an order finding that adequate notice has been given, deeming factual allegations in the notice of hearing admitted, if appropriate, conditionally dismissing the case from the SOAH docket, and conditionally remanding the case to TDHCA for disposition on a default basis. Pursuant to SOAH rules, a party has 15 calendar days after the issuance of a conditional order of dismissal and remand to file with SOAH a motion to set aside the order of dismissal and remand. On the sixteenth day after issuance, if no motion to set aside has been timely filed or if such a motion to set aside is not granted within the time limits provided for in SOAH's rules, the conditional order of dismissal and remand becomes final.

(2) When the order of dismissal and remand is final, the Executive Director shall prepare a proposed order for the Board's action containing findings of fact, as set forth in the notice of hearing, conclusions of law, and granting the relief requested by staff. The matter shall be placed on the Board's agenda for discussion and possible action at a subsequent meeting. Although public testimony is allowed, argument and evidence on the merits will not be considered at the meeting. Motions for rehearing shall be filed and served in accordance with Tex. Gov't Code Chapter 2001 and the rules of SOAH.

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

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TRD-201802921
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.16

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 1, Subchapter A, §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be a more current and compliant regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.16. Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802929
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 1018
For further information, please call: (512) 475-1762

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10 TAC §1.16

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC, Chapter 1, Subchapter A, §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code Chapters 2252, 2260, and 2270 and revise the purpose of the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that provides for clear compliance with statutory requirements. The economic cost is negligible to any individuals required to comply with the new section, because the processes described by the rule have only been minimally altered from the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

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

§1.16. Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers.

(a) Purpose. The purpose of this section is to establish standards of conduct applicable to financial advisors or service providers in accordance with Tex. Gov't Code Chapters 2263, 2270, and 2252.

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

(1) Department--The Texas Department of Housing and Community Affairs, (the "Department").

(2) Board--The Governing Board of the Department.

(3) Financial advisor or service provider--A person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker who:

(A) may reasonably be expected to receive, directly or indirectly, more than $10,000 in compensation from the Department during a fiscal year; or

(B) renders important investment or funds management advice to the Department or a member of the Board.

(c) Anti-Boycott Verification. Financial advisors and service providers are required to comply with the requirements of Tex. Gov't Code Chapter 2270, which requires a representation by each financial advisor or service provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate):

(1) does not boycott Israel; and

(2) will not boycott Israel during the term for which they provide services to the Department.

(d) Iran, Sudan and Foreign Terrorist Organizations. Financial advisors and service providers are required to comply with the requirements of Tex. Gov't Code Chapter 2252, which requires a representation by each financial advisor or service provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is not an entity listed by the Texas Comptroller of Public Accounts under Tex. Gov't Code §2252.153 or §2270.0201.

(e) Exemption from Disclosure of Interested Parties. Financial advisors and service providers are required to comply with the requirements of Tex. Gov't Code Chapter 2252. Financial advisors and service providers that make a representation that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is a publicly traded business entity are exempt from Tex. Gov't Code §2252.908.

(f) Disclosures and Statement.

(1) A financial advisor or service provider shall disclose in writing to the Executive Director of the Department and to the state auditor:

(A) any relationship the financial advisor or service provider has with any party to a transaction with the Department, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the Department, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the Department; and

(B) all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the Department, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the Department or to a member of the Board in connection with the management or investment of state funds.

(2) The financial advisor or service provider shall disclose a relationship described by this subsection without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

(3) A financial advisor or service provider shall file annually a statement with the Executive Director of the Department and with the state auditor. The statement must disclose each relationship and pecuniary interest described by this subsection, or if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

(4) The annual statement must be filed not later than April 15 in the following form. The statement must cover the reporting period of the previous calendar year.
Figure: 10 TAC §1.16(f)(B)(4)

(5) The financial advisor or service provider shall promptly file a new or amended statement with the Executive Director of the Department and with the state auditor whenever there is new information to report under this subsection.

(6) A contract under which a financial advisor or service provider renders financial services or advice to the Department or a member of the Board is voidable by the Department if the financial advisor or service provider violates a standard of conduct adopted under this section.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802922
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.17

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 1, Subchapter A, §1.17, Alternative Dispute Resolution and Negotiated Rulemaking. The purpose of the proposed repeal is to eliminate an outdated rule while adopting two new updated rules under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.17. Alternative Dispute Resolution and Negotiated Rulemaking.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802930
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 1018
For further information, please call: (512) 475-1762

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10 TAC §1.17

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC, Chapter 1, Subchapter A, §1.17, Alternative Dispute Resolution. The purposes of the proposed new section are to provide compliance with Tex. Gov't Code 2306.082 and Chapter 2009, to provide greater clarity by considering the issue of Negotiated Rulemaking separately from that of Alternative Dispute Resolution, and to make minor changes for clarity, improved readability and corrected citations.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that provides for clear guidelines for the Department's alternative dispute resolution procedures. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

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

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

§1.17. Alternative Dispute Resolution.

(a) Purpose. In accordance with Tex. Gov't Code, §2306.082, and as authorized by Tex. Gov't Code, §2009.051(c), the Department encourages the use of appropriate Alternative Dispute Resolution ("ADR") procedures under Tex. Gov't Code, Chapter 2009 to assist in the fair and expeditious resolution of internal and external disputes under the Department's jurisdiction. These ADR procedures are intended to work in conjunction with the guidelines and rules of the State Office of Administrative Hearings found at Tex. Gov't Code,

Chapter 2001; 1 TAC Part 7, Chapter 155; and with Chapter 154, Civil Practice and Remedies Code.

(b) Definitions. For purposes of this rule, terms used herein shall have the following meaning:

(1) Alternative Dispute Resolution ("ADR")--a procedure or combination of procedures described in Chapter 154, Civil Practice and Remedies Code.

(2) Dispute Resolution Coordinator--One or more trained persons employed by the Department, who may not be in the Legal Division, designated by the Executive Director to coordinate and process requests for the ADR procedures.

(3) Mediation--a dispute resolution procedure in which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. The mediator may not impose his or her own judgment on the issues for that of the parties (§154.023(a) and (b), Texas Civil Practice and Remedies Code).

(4) Impartial third party--A person who meets the qualifications and conditions of Tex. Gov't Code §2009.053. An Impartial Third Party must possess the qualifications required under the Texas Civil Practice and Remedies Code §154.052 (a minimum of 40 classroom hours of training in dispute resolution techniques), is subject to the standards and duties prescribed by Texas Civil Practice and Remedies Code §154.053 and has the qualified immunity prescribed by Texas Civil Practice and Remedies Code §154.055 for volunteer third parties not receiving compensation in excess of expenses, if applicable. (Tex. Gov't Code §2009.053(d)).

(c) Preliminary Considerations.

(1) The Department encourages communication between Department staff and applicants to the Department programs, and other interested persons, to exchange information and informally resolve disputes.

(2) The Department has appeal procedures found at 10 TAC §1.7, and at 10 TAC §10.902. ADR procedures supplement and do not limit any available procedure for the resolution of disputes (Tex. Gov't Code §2009.052(a)). Pursuing an ADR procedure does not suspend or delay application, appeal, or other deadlines. For example, if a tax credit applicant desires to appeal a Department decision using the procedures promulgated under §2306.6715 and also desires to pursue an ADR procedure, the applicant may independently pursue the two procedures. Each procedure will proceed independently of the other. However, ADR does not suspend any statutory deadlines or grant any additional authority to resolve issues beyond statute.

(3) Consistent with Tex. Gov't Code §2306.082(e), the ADR procedure must be requested before the Department's Board makes a final decision on an issue.

(4) Consistent with Tex. Gov't Code §2306.082(f), the ADR procedure may not be used to unnecessarily delay an appeal proceeding, or other deadline.

(d) Appropriateness of ADR.

(1) Assessment of the Dispute. In determining whether an ADR procedure is appropriate, the parties to the dispute, including the Department, should consider the following factors:

(A) whether direct discussions and negotiations between the parties have been unsuccessful and/or the parties believe there is a misunderstanding involving the facts or interpretations that could be improved with the assistance of an Impartial Third Party;

(B) whether the use of ADR potentially could use fewer resources and take less time than other available procedures, and that there is a reasonable likelihood that the use of ADR will result in an agreement to resolve the dispute;

(C) whether there is a reasonable likelihood that the use of ADR will result in an agreement to resolve the dispute, and there are potential remedies or solutions that are only available through ADR; and/or

(D) whether the need for a final decision with precedential value is less important than other considerations. (Nothing herein should be construed as creating a presumption that a final decision establishes binding precedent in any given manner).

(2) The parties may also consider additional factors found in the State Office of Administrative Hearings' ADR Model Guidelines for assessing whether a dispute is appropriate for mediation.

(3) Independent of any proposal from interested parties outside the Department, the Department may propose using ADR procedures to interested parties to try to resolve a dispute.

(e) ADR Process.

(1) Any applicant for Department programs or other interested person may request the use of an ADR procedure to attempt to resolve a dispute with the Department. The ADR request must be submitted in writing to the Department's Dispute Resolution Coordinator at the mailing address or email address listed on the Department's website. The request for ADR must state the nature of the dispute, the parties involved, any pertinent or impending deadlines, whether all parties agree to refer the dispute to ADR, proposed times and locations, and the preferred type of ADR procedure.

(2) If an applicant or other interested person is uncertain whether to propose the possible use of ADR or is uncertain about any particular aspect of a possible proposal, they should contact the Department's Dispute Resolution Coordinator to discuss the matter.

(3) The ADR Coordinator will notify the person requesting the ADR procedure that an ADR decision is not binding on the state and that the Department will mediate in good faith.

(4) The ADR Coordinator will provide copies of the request received, and all other materials received, to any other parties to the dispute.

(5) The Dispute Resolution Coordinator shall provide a copy of the ADR request to the Executive Director and General Counsel and other applicable internal parties.

(6) The Dispute Resolution Coordinator will assess whether ADR would assist in fairly and expeditiously resolving the dispute and will notify all affected parties within seven calendar days of receiving an ADR request of one of the following determinations:

(A) If the parties, including the Department, cannot agree on whether an ADR procedure should be used or on the particulars of the ADR procedure, the Dispute Resolution Coordinator will notify both parties that agreement to utilize ADR could not be reached;

(B) If the Dispute Resolution Coordinator determines not to refer the dispute to ADR, the Dispute Resolution Coordinator shall state the reasons in writing; or

(C) If the Dispute Resolution Coordinator decides to refer the dispute to ADR, the date for the selected ADR process will be included in the notice.

(f) Selection of Mediator or Impartial Third Party.

(1) The Department designates the State Office of Administrative Hearings ("SOAH") as the primary mediator for Department ADR requests as required by Tex. Gov't Code §2306.082(b).

(2) If the Department and SOAH agree to utilize an Impartial Third Party other than one so designated through SOAH, an Impartial Third Party will be identified.

(3) The selection of an Impartial Third Party is subject to the approval of the parties to the dispute. If the parties do not suggest potential third parties, the Dispute Resolution Coordinator will provide a list of potential third parties from which to choose. If all parties agree to use an Impartial Third Party who charges for ADR services, then the costs for the Impartial Third Party shall be apportioned equally among all parties, unless otherwise agreed by the parties.

(g) Voluntary Agreement. All parties participating must have the authority to reach an agreement to make a final recommendation to resolve the dispute. The Executive Director will abide by an agreed upon solution to the dispute and either approve that agreement or offer that recommendation to the Board, if Board authorization is needed. The decision to reach agreement is voluntary. If the parties reach a resolution and execute a written agreement, the agreement is enforceable in the same manner as any other written agreement of the same nature with the State. A written agreement to which the Department is a signatory resulting from an ADR procedure must be approved by the appropriate authority.

(h) A written agreement to which the Department is a signatory resulting from an ADR procedure is subject to Tex. Gov't Code Chapter 552 concerning open records.

(i) Confidentiality of Records and Communications. The confidentiality of the communications, records, conduct, and demeanor of an impartial third party and parties in an ADR procedure are governed by Tex. Gov't Code §2009.054.

(j) The Department may share the results of its ADR process with other governmental bodies, and with the Center for Public Policy Dispute Resolution at the University of Texas School of Law, which may collect and analyze the information and report its conclusions and useful information to governmental bodies and the legislature.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802923
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.18

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 1, Subchapter A, §1.18, Colonia Housing Standards. After review of this rule in compliance with Tex. Gov't Code §2001.039, the Department has assessed this rule and determined that there is no longer a need for this rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation, as it is no longer necessary;

7. The proposed repeal will decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be the elimination of unnecessary regulations. There will not be any economic cost to any individuals required to comply with the repealed section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

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

§1.18. Colonia Housing Standards.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802933
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.19

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 1, Subchapter A, §1.19, Reallocation of Financial Assistance. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Government Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.19. Reallocation of Financial Assistance.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802934
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.19

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC, Chapter 1, Subchapter A, §1.19, Reallocation of Financial Assistance. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2161.003 and §2306.111(h), add the purpose of the rule, make some sections more concise, add that the receipt of program income is an instance when reallocation may need to occur, add that Notices of Funding Availability may also be a governing document for reallocation decisions, remove the requirement that $1 million in HOME funds is set aside annually for disaster relief as this is now addressed in the program planning documents, and improve readability and clarity.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that provides for clear guidelines and improved clarity. There will not be any economic cost to any individuals required to comply with the new section, because the

processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, AUGUST 16, 2018.

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

§1.19. Reallocation of Financial Assistance.

(a) Purpose. As provided for by Tex. Gov't Code §2306.111(h), this rule provides the policy for the reallocation of financial assistance, including assistance related to bonds, administered by the Department if the Department's obligation with respect to that assistance is prematurely terminated.

(b) It is the policy of the Department to take prudent measures to ensure that, when funds are provided to recipients for assistance, they are timely and lawfully utilized and that, if they cannot be timely and lawfully utilized by the initial recipient, there are mechanisms in place to reallocate those funds to other recipients in order to ensure their full utilization while maximizing assistance to beneficiaries.

(c) The reallocation of federal or state financial assistance administered by the Department may be required when:

(1) an administrator, subrecipient, owner, or contractor returns contracted funds;

(2) reserved funds are not fully utilized at completion of an activity;

(3) balances on contracts remain unused;

(4) funds in a contract or reservation are partially or fully recaptured or terminated;

(5) required benchmarks or expenditure deadlines have not been achieved within the time frames agreed; or

(6) there is program income.

(d) Reallocation of financial assistance for specific federal or state funding sources or programs administered by the Department is also governed by or provided for in:

(1) federal regulations and requirements;

(2) state rules adopted in other Sections of this Part;

(3) funding plans authorized by the Board governing federal or state resources that may have been reviewed and approved by the federal funding agency;

(4) Notices of Funding Availability or NOFAS; or

(5) written agreements and contracts relating to the administration of such funds.

(e) To the extent that programs or funding sources are governed by any of the items provided for in subsection (d) of this section, and the specific documents listed in subsection (d) of this section do not require further Board approval, no additional approval to take action on such reallocation is required. Reallocation of funding not governed by subsection (d) of this section will require Board approval.

(f) To the extent that certain programs are required to regionally allocate their annual allocations of funds, funds reallocated under this section do not require subsequent regional allocation.

(g) Funds made available under this section may be aggregated over a period of time prior to being reallocated.

(h) Consistent with the requirements of Tex. Gov't Code §2306.111(h), if the Department's obligation of financial assistance related to bonds is terminated prior to issuance, the assistance will be reallocated among other activities permitted by that bond issuance and any indenture associated with those bonds, as approved by the Board.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802924
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1762

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.247

The Public Utility Commission of Texas (commission) proposes amendments to §25.247, relating to rate review schedule. The proposed amendments will establish a schedule requiring periodic filings for rate proceedings by non-investor-owned transmission service providers operating within the Electric Reliability Council of Texas (ERCOT). Project Number 48377 is assigned to this proceeding.

Darryl Tietjen, Director of the Rate Regulation Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Tietjen has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of adopting the amendments will be to ensure regularly scheduled commission reviews of the reasonableness and appropriateness of rates charged by non-in-

vestor-owned transmission service providers operating in ERCOT.

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. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Mr. Tietjen has also determined that for each year of the first five years the proposed amendments are in effect there should be no effect on a local economy, and, therefore, no local employment impact statement is required under the Administrative Procedure Act (APA), Tex. Gov't Code Ann. §2001.022 (West 2016 & Supp. 2017).

Mr. Tietjen has also determined that for each year of the first five years that the proposed amendments are in effect, the following statements will apply: (1) the proposed amendments will not create or eliminate a government program; (2) implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed amendments will not require an increase or decrease in fees paid to the agency; (5) the proposed amendments will create a new regulation; (6) the proposed amendments will expand an existing regulation; (7) the proposed amendments will not increase the number of individuals subject to the proposed rule's applicability; and (8) the proposed amendments will not positively or adversely affect this state's economy.

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with the APA §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 18, 2018. The request for a public hearing must be received within 30 days after publication.

Initial comments on the proposed amendments may be filed with the Commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of such comments are required by 16 TAC §22.71(c) to be submitted when filed. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendments. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 48377.

This amendments are proposed under Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016 and Supp. 2017) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §35.004, which grants the commission authority to approve wholesale transmission rates including those of non-investor-owned electric utilities.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §35.004.

§25.247. Rate Review Schedule.

(a) Application. This section applies to investor-owned electric utilities and non-investor-owned transmission service providers operating [~~only to an electric utility, other than a river authority, that operates solely~~] inside the Electric Reliability Council of Texas (ERCOT).

(b) Filing requirements for investor-owned electric utilities.

(1) Each investor-owned electric utility in the ERCOT region must file for a comprehensive rate review within 48 months of the order setting rates in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case. For an investor-owned [~~a~~] transmission and distribution utility, the filing must include information necessary for the review of both transmission and distribution rates.

(2) On a year-to-year basis, the commission shall issue an order extending the filing requirements under paragraph (1) of this subsection by one year if the following conditions are met:

(A) for an investor-owned electric utility providing transmission-only service, the utility's most recent earnings monitoring report, as of 180 days before its scheduled filing date established by this section, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis using weather data for the most recent ten calendar years, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each investor-owned transmission-only utility operating in ERCOT; or

(B) for an investor-owned [~~a~~] transmission and distribution utility, the utility's most recent earnings monitoring report, as of 180 days before its scheduled filing date established by this section, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis using weather data for the most recent ten calendar years, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each investor-owned transmission and distribution utility operating in ERCOT with at least 175,000 metered customers.

(3) (No change.)

(4) An investor-owned electric utility qualifying for an extension under paragraph (2) of this subsection shall submit notice in the same project as the filing of its most recent earnings monitoring report at least 180 days before the fourth anniversary of the order in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case.

(5) Nothing in this section limits the commission's authority to initiate a rate proceeding at any time under this title on the basis of other criteria that the commission determines are in the public interest, including but not limited to the information provided in an investor-owned electric utility's earnings monitoring report.

(c) Transition issues for investor-owned electric utilities.

(1) If an investor-owned electric utility [~~subject to subsection (a) of this section~~] has a comprehensive rate proceeding pending on the effective date of this rule, the electric utility is required to file,

after the commission's final order in that pending proceeding, a comprehensive rate proceeding in accordance with subsection (b) of this section. If the pending proceeding is withdrawn, dismissed, or otherwise resolved without a final order, the investor-owned electric utility shall be subject to the transition timelines in paragraph (2) of this subsection unless the commission orders otherwise.

(2) All investor-owned electric utilities [~~subject to subsection (a) of this section~~] shall make their initial filings under subsection (b) of this section on or before the later of:

(A) 48 months from the order in the investor-owned electric utility's last comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case; or

(B) (No change.)

(d) Filing requirements for non-investor-owned transmission service providers.

(1) Except as provided for under subsection (e) of this section, each non-investor-owned transmission service provider is required to submit a complete application for an interim update under §25.192(h) of this title (relating to Transmission Service Rates) within 48 months of its most recently approved change in transmission service rates under §25.192 of this title.

(2) Nothing in this section limits the commission's authority to initiate a rate proceeding at any time under this title on the basis of other criteria that the commission determines are in the public interest, including but not limited to the information provided in a non-investor-owned transmission service provider's earnings monitoring report.

(e) Transition issues for non-investor-owned transmission service providers. For a non-investor-owned transmission service provider that has not had a commission-approved change to its transmission service rates under §25.192 of this title within 36 months prior to the effective date of this rule, the following deadlines apply for submitting an initial application for an interim update under §25.192(h) of this title:
Figure: 16 TAC §25.247(e)

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

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802863
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter E, §84.61 and §84.63; and Subchapter K, §§84.300, 84.301, and 84.302, regarding the Driver Education and Safety program.

JUSTIFICATION AND EXPLANATION OF THE RULES

Senate Bill 848 (SB 848) and House Bill 912 (HB 912), 85th Legislature, Regular Session (2017) removed outdated language; expanded the population of persons who are authorized to provide instruction in the "parent taught" driver education program; reduced the driver education course provider bond to $10,000; and authorized driver education and driving safety course completion certificates to be issued electronically. In a previous rulemaking, published in the *Texas Register* (43 TexReg 1431), the Department adopted provisions regarding SB 848 and HB 912.

This rule proposal implements the remainder of SB 848 and HB 912 regarding the issuance of electronic certificates. The proposed rules are necessary to complete the implementation of SB 848 and HB 912.

The proposed rules were discussed by the Driver Training and Traffic Safety Advisory Committee (Committee) at its meeting on May 9, 2018. The Committee recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION- BY- SECTION SUMMARY

The proposed amendments to §84.61 require driving safety schools and course providers to issue completion certificates electronically.

The proposed amendments to §84.63 allow for certificates to be issued electronically.

The proposed amendments to §84.300 reduce the driver education fees.

The proposed amendments to §84.301 clarify and reduce the driving safety fees.

The proposed amendments to §84.302 reduce the drug and alcohol driving awareness fees.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rules are in effect there will be no direct cost to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Francis has determined that for each year of the first five years the proposed rules are in effect, there will be no estimated increase or loss in revenue to local government as a result of enforcing or administering the proposed rules. However, there will be an estimated loss in revenue to the state as a result of enforcing or administering the proposed rules.

It is determined that a reduction in initial and renewal license fees of various licenses will reduce the total amount of money obtained by the state each year for this program, as noted below:

The initial application fee for a primary driver education school will decrease from $1,000 to $750. The agency anticipated receiving approximately 22 applications per year for the next five years, a decrease of $5,500 per year.

The initial application fee for a branch driver education school will decrease from $850 to $750. The agency anticipated receiving approximately 20 applications per year for the next five years, a decrease of $2,000 per year.

The renewal application fees for both primary and a branch driver education schools will decrease from $200 to $150. The agency anticipated receiving approximately 440 applications per year for the next five years, a decrease of $22,000 per year.

The fee for a change of the physical address for a driver education primary school and branch will decrease from $180 to $150. The agency anticipated receiving approximately 32 requests per year for the next five years, a decrease of $960 per year.

The fee for a change of name of a driver education school or to change the name of an owner will decrease from $100 to $50. The agency anticipated receiving approximately 3 requests per year for the next five years, a decrease of $150 per year.

The application fee for approval of a traditional driver education course exclusively for adults will decrease from $500 to $200. The agency anticipated receiving approximately 14 applications per year for the next five years, a decrease of $4,200 per year.

The application fee for approval of an online driver education course exclusively for adults will decrease from $9,000 to $1,200. The agency anticipated receiving approximately 1 application per year for the next five years, a decrease of $7,800 per year.

The application fee for approval of a 32-hour Alternative Method of Instruction (AMI) for driver education classroom will decrease from $15,000 to $6,400. The agency anticipated receiving approximately 1 application per year for the next five years, a decrease of $8,600 per year.

The initial application fee for a driving safety course provider will decrease from $2,000 to $750. The agency anticipated receiving approximately 3 applications per year for the next five years, a decrease of $3,750 per year.

The fee for a driving safety course approval will decrease from $9,000 to $1,200. The agency anticipated receiving approximately 1 request for approval per year for the next five years, a decrease of $7,800 per year.

The initial application fee for a drug and alcohol driving awareness school will decrease from $150 to $100. The agency anticipated receiving approximately 6 applications per year for the next five years, a decrease of $300 per year.

The initial application fee for a drug and alcohol driving awareness instructor license will decrease from $75 to $50. The agency anticipated receiving approximately 6 applications per year for the next five years, a decrease of $150 per year.

The total annual amount of estimated loss of revenue to the state as a result of the reduction in the fees, as noted above, amounts to $63,210 per year, for the first five years the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Francis has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Francis has also determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit by reduced fees, which will allow licensees to save a significant amount. In addition, the ability for students to be able to electronically obtain e-certificates from course providers after having successfully completing a driver safety course will reduce paper and allow for quicker processing.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Francis has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules.

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

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

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) The proposed rule does not create or eliminate a government program.

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

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

(4) The proposed rule does require a decrease in fees paid to the agency. Certain fees have been reduced based on the cost to administer and enforce the program.

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does expand an existing regulation, by allowing an option for driving safety course providers to electronically issue uniform certificates of course completion.

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

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

PUBLIC COMMENTS

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER E. DRIVING SAFETY SCHOOLS, COURSE PROVIDERS AND INSTRUCTORS

16 TAC §84.61, §84.63

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposal.

§84.61. Driving Safety School and Course Provider Responsibilities.

(a) (No change.)

(b) Each course provider or employee shall:

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

(9) submit a plan for the electronic issuance of uniform certificates of course completion for approval by the department prior to its implementation;

(10) issue uniform certificates of course completion that comply with the certificate design specifications approved by the department;

(11) [~~(9)~~] develop and maintain a department-approved method for [~~printing and~~] issuing original and duplicate uniform certificates of course completion that, to the greatest extent possible, prevents the unauthorized production, alteration, or misuse of the certificates;

(12) [~~(10)~~] report original and duplicate certificate data, by secure electronic transmission, to the department within five (5) [~~thirty (30)~~] days of issuance [~~issue~~] using guidelines established and provided by the department. The issue date indicated on the certificate shall be the date the course provider issues [~~mails~~] the certificate to the student.

[~~(11) ensure that the front of each uniform certificate of course completion contains the department complaint contact information and current department telephone number in a font that is visibly recognizable.~~]

(c) (No change.)

§84.63. Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course.

(a) Course provider responsibilities. Course providers shall be responsible for original and duplicate uniform certificates of course completion in accordance with this subsection.

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

(5) Course providers shall issue [~~and mail~~] uniform certificates of course completion only to students who have successfully completed all elements of the course provider's approved driving safety or specialized driving safety course taught by department-licensed instructors in department-approved locations as indicated on the verification of course completion document or student footprint.

(6) - (8) (No change.)

(9) Course providers shall issue [~~mail~~] all original and duplicate uniform certificates of course completion using first-class or enhanced postage, [~~or an~~] equivalent commercial delivery method, or department approved electronic issuance method.

(10) - (11) (No change.)

(12) No course provider or employee shall issue, [~~mail,~~] transfer, or transmit an original or duplicate uniform certificate of course completion bearing the serial number of a certificate or duplicate previously issued.

(13) - (15) (No change.)

(16) The fee for a duplicate uniform certificate of course completion shall not exceed [~~is~~] $10. If the student requests a duplicate within thirty (30) days of the date of issue of the original certificate because the original was not received or was damaged so as to be unusable or was issued with errors due to no fault of the student, the course provider shall issue the duplicate at no cost to the student. Course providers shall ensure that schools endorsed to offer the approved course are aware of this rule and shall include this information in the student enrollment contract.

(17) Course providers shall implement and maintain methods for efficiently issuing [~~and mailing~~] original uniform certificates of course completion so that issuance of duplicate certificates is kept at a minimal rate. [~~A ratio of duplicates to originals that would indicate to a reasonable and prudent person that the course provider has failed to minimize duplicates constitutes evidence that a violation of §1001.056(c-1) of the Code, exists and shall be sufficient to initiate proceedings to sanction or condition the license of the course provider in question.~~]

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

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

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802859
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 463-8179

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SUBCHAPTER K. FEES

16 TAC §§84.300 - 84.302

The amendments are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposal.

§84.300. Driver Education Fees.

(a) (No change.)

(b) Driver Education School Fees:

(1) The initial application fee for a primary driver education school is $750 [~~$1,000~~].

(2) The initial application fee for a branch driver education school is $750 [~~$850~~].

(3) The renewal application fee for a primary driver education school is $150 [~~$200~~].

(4) The renewal application fee for a branch driver education school is $150 [~~$200~~].

(5) The fee for a change of the physical address for [~~of~~] a driver education primary school and branch is $150 [~~$180~~].

(6) The fee for a change of name of a driver education school or to change the name of an owner is $50 [~~$100~~].

(7) If a driver education school changes ownership as defined under §84.2(6), the fee paid by the new owner is $750 [~~$1,000~~] for a primary driver education school and $750 [~~$850~~] for a branch driver education school.

(c) (No change.)

(d) Driver Education Course Fees:

(1) The application fee for approval of a traditional driver education course exclusively for adults is $200 [~~$500~~].

(2) The application fee for approval of an online driver education course exclusively for adults is $1,200 [~~$9,000~~].

(3) The application fee for each additional driver education course is $25.

(4) The application fee for approval of a 32-hour Alternative Method of Instruction (AMI) for driver education classroom is $6,400 [~~$15,000~~].

(5) The application fee for approval of part of a 32-hour AMI for driver education classroom is $200 [~~$500~~] per instructional hour.

(6) The fee for a DE-964 certificate of completion is $1.00.

(7) The fee for an ADE-1317 certificate of completion is $1.00.

(e) (No change.)

§84.301. Driving Safety Fees.

(a) (No change.)

(b) Driving Safety School Fees:

(1) The initial application fee for a driving safety school is $150.

(2) The fee for a change of the physical address for [~~of~~] a driving safety school is $50.

(3) The fee for a change of name of a driving safety school or name of owner is $50.

(4) If a driving safety school changes ownership as defined under §84.2(6), the fee paid by the new owner is $100 [~~$150~~].

(c) (No change.)

(d) Driving Safety Course Provider Fees:

(1) The initial application fee for a course provider is $750 [~~$2,000~~].

(2) The annual renewal application fee for a course provider is $200.

(3) The fee for a change of address of a course provider is $50.

(4) The fee for a change of name of a course provider or name of owner is $50 [~~$100~~].

(5) If a driving safety course provider changes ownership as defined under §84.2(6), the fee paid by the new owner is $750 [~~$2,000~~].

(e) Driving Safety Course Fees:

(1) The fee for a driving safety course approval is $1,200 [~~$9,000~~].

(2) The fee for a specialized driving safety course approval is $1,200 [~~$9,000~~].

(3) The application fee for each additional course for a driving safety school is $25.

(4) The fee for a course completion certificate number is $1.00.

(f) (No change.)

§84.302. Drug and Alcohol Driving Awareness Fees.

(a) (No change.)

(b) Drug and Alcohol Driving Awareness Schools:

(1) The initial application fee for a drug and alcohol driving awareness school is $100 [~~$150~~].

(2) The fee for a change of address of a drug and alcohol driving awareness school is $50.

(3) The fee for a change of name of a drug and alcohol driving awareness school or name of owner is $50.

(4) If a drug and alcohol driving awareness school changes ownership as defined under §84.2(6), the fee paid by the new owner is $100 [~~$150~~].

(c) Drug and Alcohol Driving Awareness Programs:

(1) The fee for a drug and alcohol driving awareness program approval is $1,200 [~~$9,000~~].

(2) The fee for a drug and alcohol driving awareness program alternative delivery method approval is $1,200 [~~$9,000~~].

(3) The application fee for each additional program for a drug and alcohol driving awareness school is $25.

(d) Drug and Alcohol Driving Awareness Instructors:

(1) The initial application fee (including processing and licensing fees) for a drug and alcohol driving awareness instructor license is $50 [$75].

(2) The renewal application fee for a drug and alcohol driving awareness instructor license is $25.

(e) (No change.)

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

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Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

SUBCHAPTER C. HIGH SCHOOL

19 TAC §113.50

The State Board of Education (SBOE) proposes new §113.50, concerning Texas Essential Knowledge and Skills (TEKS) for social studies. The proposal would add TEKS for a new high school social studies course on Mexican American studies for implementation in the 2019-2020 school year.

The 83rd Texas Legislature, 2013, passed House Bill (HB) 5, amending the Texas Education Code (TEC), §28.025, to change the high school graduation programs from the minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. In August 2013, the SBOE held a work session to discuss changes to the graduation requirements in order to align with the requirements of HB 5, including discussion of courses required by HB 5. At the January 2014 meeting, the SBOE approved the final adoption of new 19 TAC Chapter 74, Curriculum Requirements, Subchapter B, Graduation Requirements. At the April 2014 meeting, the SBOE prioritized the development of new courses to align with requirements of HB 5. The list of new courses to be developed included a Mexican American studies course.

In spring 2015, a new Mexican American Studies innovative course was approved by the commissioner of education for use beginning with the 2015-2016 school year. School districts and open-enrollment charter schools may offer any state-approved innovative course for elective credit with the approval of the local board of trustees.

There are currently state-approved TEKS for general social studies elective courses that allow educators to select specific historical, cultural, or research topics in social studies to address in greater depth. In social studies, these courses include Special Topics in Social Studies, Social Studies Research Methods, and Social Studies Advanced Studies.

The SBOE held discussions regarding the development of TEKS for a Mexican American studies course at its January-February and April 2018 meetings. At the April 2018 meeting, the SBOE instructed staff to prepare rule text for a new course based on the currently approved Mexican American Studies innovative course submitted by Houston Independent School District and to present the item for first reading and filing authorization at the June 2018 meeting.

The SBOE held a public hearing on the proposed new section on June 12, 2018, and approved the new section for first reading and filing authorization at its June 15, 2018, meeting.

The proposed new section would have no procedural and reporting requirements. The proposed new section would have no locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposed new section is in effect there will be no additional costs to state or local government as a result of enforcing or administering the proposed new section.

There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed new section does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years, the proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. The proposed rulemaking should not impact positively or negatively the state's economy.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing the new section will be a new TEKS-based course option for students and increased flexibility in meeting graduation requirements. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/.

Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §7.102(c)(4) and §28.002.

§113.50. Ethnic Studies: Mexican American Studies (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 10-12.

(b) Introduction.

(1) In Ethnic Studies: Mexican American Studies, an elective course, students learn about the history and cultural contributions of Mexican Americans. Students explore history and culture from an interdisciplinary perspective. The course emphasizes events in the 20th and 21st centuries, but students will also engage with events prior to the 20th century.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, landmark cases of the U.S. Supreme Court, novels, speeches, letters, diaries, poetry, songs, and artwork is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students identify and discuss how the actions of U.S. citizens and the local, state, and federal governments have either met or failed to meet the ideals espoused in the founding documents.

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

(c) Knowledge and skills.

(1) History. The student understands historical points of reference in Mexican American history. The student is expected to apply absolute and relative chronology through the sequencing of significant individuals, events, and time periods.

(2) History. The student understands developments related to pre-colonial settlements and Spanish colonization of Mesoamerica and North America. The student is expected to:

(A) explain the significance of the following events as turning points relevant to Mexican American history: Aztec arrival in Mexico's central valley, establishment of the Aztec Empire, Hernán Cortéz's first encounter with the Aztecs, Spanish conquest of the Aztecs, creation of the New Laws, and Jesuit expulsion from the Americas; and

(B) examine the contributions of significant individuals from the Spanish colonial era, including Moctezuma, Hernán Cortéz, La Malinche, Bartolomé de las Casas, and Sor Juana Inés de la Cruz.

(3) History. The student understands developments related to Mexican independence and Mexico's relationship with the United States from 1800-1930. The student is expected to:

(A) explain the significance of the following events as turning points relevant to Mexican American history: the Grito de Dolores, Mexico's acquisition of independence, Texas's declaration of independence from Mexico, Mexican-American War, Treaty of Guadalupe Hidalgo, Mexican Revolution, creation of the U.S. Border Patrol, and Mexican repatriation of the 1930s; and

(B) examine the contributions of significant individuals from this period such as Father Miguel Hidalgo, José María Morelos, Augustín de Iturbide, Emiliano Zapata, Francisco (Pancho) Villa, Francisco Madero, Porfirio Díaz, and Álvaro Obregón.

(4) History. The student understands the causes and impact of the Mexican American civil rights movement from the 1940s to 1975. The student is expected to:

(A) explain the significance of the following events as turning points relevant to Mexican American history: U.S. entry into World War II, Bracero Program, Longoria Affair, Operation Wetback, Hernández v. Texas, Brown v. Board of Education, Civil Rights Act of 1964, Voting Rights Act of 1965, Farmworkers strike and boycott, and establishment of La Raza Unida Party; and

(B) identify the contributions of significant individuals from the civil rights era such as César Chávez, Dolores Huerta, Reies López Tijerina, José Ángel Gutiérrez, Rubén Salazar, Emma Tenayuca, Rodolfo "Corky" Gonzáles, Marcario García, Héctor P. García, Roy Benavidez, and Martha P. Cotera.

(5) History. The student understands the development of voting rights and ideas related to citizenship for Mexican Americans from 1975 to the present. The student is expected to:

(A) explain the significance of the following events as turning points relevant to Mexican American history: the Immigration Reform and Control Act, Illegal Immigration Reform and Immigration Responsibility Act; and H.R. 4437 passed by the U.S. House of Representatives in 2006; and

(B) identify the contributions of significant individuals such as Raul Yzaguirre, Willie Velásquez, Gloria Anzaldúa, Henry Cisneros, Cherrie L. Moraga, and Bill Richardson.

(6) Geography. The student understands the impact of geographic factors on major events related to Mexican Americans. The student is expected to:

(A) locate places and regions of cultural and historical significance in Mexican American history;

(B) identify physical and human geographic factors related to the settlement of American Indian societies;

(C) explain how issues of land use related to Mexican Independence, Texas Independence, and the Mexican Revolution;

(D) analyze physical and human geographic factors related to Mexican migration from the 1910s to the 1930s;

(E) identify physical and human geographic factors related to the migration of Mexican laborers as part of the 1940s Bracero Program; and

(F) analyze the physical and human geographic factors related to contemporary Mexican migration to and Mexican American migration within the United States.

(7) Economics. The student understands domestic issues related to Mexican American population growth, labor force participation, and the struggle to satisfy wants and needs given scarce resources. The student is expected to:

(A) analyze the economic impact of Mexican repatriation of the 1930s;

(B) evaluate the contributions of the Bracero Program to the U.S. war effort and the development of the agricultural economy in the American Southwest;

(C) explain the struggle to create a farmworkers union and the union's efforts to fight for better wages;

(D) analyze the economic contributions of the Mexican American labor force;

(E) analyze the purchasing power of the Mexican American population as it relates to U.S. household consumption and gross domestic product (GDP); and

(F) discuss current issues related to the Mexican American labor force.

(8) Government. The student understands the significance of political decisions and the struggle for Mexican American political power throughout U.S. history. The student is expected to:

(A) describe how Mexican Americans have participated in supporting and changing government;

(B) analyze the impact of Delgado v. Bastrop Independent School District (ISD) and Hernández v. Texas on Mexican Americans and the end of the biracial paradigm;

(C) analyze the Mexican American struggle for civil rights as manifested in the Chicano movement;

(D) evaluate the successes and failures of the Mexican American civil rights movement and the farmworkers movement;

(E) analyze the significance of U.S. Supreme Court decisions in Miranda v. Arizona, San Antonio ISD v. Rodríguez, and Plyler v. Doe; and

(F) discuss the role of various organizations such as the American G.I. Forum, the League of United Latin American Citizens (LULAC), the Mexican American Legal Defense and Educational Fund (MALDEF), the National Association of Latino Elected and Appointed Officials (NALEO), and the National Council of La Raza (NCLR) that have participated in the Mexican American struggle for political power.

(9) Citizenship. The student understands the importance of the respectful expression of different points of view in a constitutional republic. The student is expected to:

(A) describe the rights and responsibilities of Mexican Americans as Americans in civic participation within the United States;

(B) discuss ways Americans interpret formal citizenship and cultural citizenship, including membership in one nation and membership in diverse cultural groups;

(C) discuss ways individuals contribute to the national identity as members of diverse cultural groups; and

(D) analyze the connotations and histories of identity nomenclature relevant to Mexican Americans such as Mexican, Spanish, Hispanic, Chicana/o, illegal, undocumented, Mexican American, and American Mexican.

(10) Culture. The student understands the relationship between Mexican American artistic expression and the times during which the art was created. The student is expected to:

(A) describe how the characteristics and issues of Mexican American history have been reflected in various genres of art, music, film, and literature;

(B) analyze the significance of selected works of Mexican American literature such as "I am Joaquín" (1967) by Rodolfo "Corky" Gonzáles and "Pensamiento Serpentino" (1971) by Luis Valdez;

(C) describe the role of artistic expression in mobilizing Mexican Americans and others toward civic participation and action such as the role of "Teatro Campesino" during the farmworkers movement;

(D) identify the contributions of women such as Sandra Cisneros and Norma Alarcón; and

(E) identify the impact of Mexican American popular culture on the United States and the world over time.

(11) Science, technology, and society. The student understands the impact of Mexican American individuals and groups on the development of science and technology in American society and on a global scale. The student is expected to:

(A) explain the major ideas in astronomy, mathematics, and architectural engineering that developed in the Maya and Aztec civilizations; and

(B) identify contributions to science and technology in the United States and the world made by Mexican Americans such as Albert Baez, Martha E. Bernal, Ellen Ochoa, and Linda Garcia Cubero.

(12) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) use social studies terminology correctly;

(B) analyze diverse points of view related to contemporary Mexican American issues;

(C) create a written and/or oral presentation on a contemporary issue or topic relevant to Mexican Americans using critical methods of inquiry; and

(D) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802915
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1497

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SUBCHAPTER D. OTHER SOCIAL STUDIES COURSES

19 TAC §113.69, §113.70

The State Board of Education (SBOE) proposes the repeal of §113.69 and §113.70, concerning Texas Essential Knowledge and Skills (TEKS) for social studies. The proposal repeals would remove rules that are outdated and no longer necessary.

Section 113.69 permits a student to receive one-half to one credit for a social studies elective course or for a non-sequential course in languages other than English (LOTE) by successfully completing the LOTE course Cultural and Linguistic Topics. The Cultural and Linguistic Topics course was eliminated from the TEKS with the revisions to the LOTE TEKS that were implemented in the 2017-2018 school year. Additionally, it is not necessary to specify that a student may receive a social studies elective credit since electives are not classified by a specific subject area. As a result, the rule is outdated and no longer necessary.

Section 113.70 requires that a student be awarded one-half credit for each semester of successful completion of a college course in which the student is concurrently enrolled while in high school. However, credit is awarded based on demonstrated proficiency of the TEKS for a course. As written, this rule is not accurate and should be repealed.

The SBOE approved the repeals for first reading and filing authorization at its June 15, 2018, meeting.

The proposed repeals would have no new procedural and reporting requirements. The proposed repeals would have no new locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposed repeals are in effect there will be no additional costs to state or local government as a result of enforcing or administering the proposed repeals.

There is no effect on local economy for the first five years that the proposed repeals are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed repeals do not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years, the proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. The proposed rulemaking should not impact positively or negatively the state's economy.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the removal of outdated and unnecessary rules to prevent confusion for administrators and counselors. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_

Rules_(TAC)/Proposed_State_Board_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A request for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

STATUTORY AUTHORITY. The repeals are proposed under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE by rule to identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002, and to allow a student to comply with the curriculum requirements by successfully completing a dual credit course.

CROSS REFERENCE TO STATUTE. The repeals implement the Texas Education Code, §7.102(c)(4), §28.002, and §28.025.

§113.69. Other Courses for which Students May Receive Social Studies Credit.

§113.70. Concurrent Enrollment in College Courses.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802916
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER J. PROCEDURES RELATED TO OUT-OF-NETWORK HEALTH BENEFIT CLAIM DISPUTE RESOLUTION

22 TAC §§187.87 - 187.89

The Texas Medical Board (Board) proposes amendments to §187.87, concerning Definitions, §187.88, concerning Complaint Process and Resolution and §187.89, concerning Notice of Availability of Mandatory Mediation.

The amendments to §187.87 add and update definitions in order to ensure the rules are consistent with Chapter 1467 of the Texas Insurance Code, amended by Senate Bill 507, passed by the 85th legislative session.

The amendments to §187.88, change language expanding the providers and facilities eligible for participation in the balance billing mediation process, in order to ensure the rules are consistent with Chapter 1467 of the Texas Insurance Code, amended by Senate Bill 507, passed by the 85th legislative session.

The amendments to §187.89, change language expanding the providers and facilities eligible for participation in the balance billing mediation process, and delete unnecessary language in order to ensure the rules are consistent with Chapter 1467 of the Texas Insurance Code, amended by Senate Bill 507, passed by the 85th legislative session.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to ensure rules are consistent with statutes.

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

There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses or rural communities.

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

(1) The proposed rules do not create or eliminate a government program.

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

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

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

(5) The proposed rules do not create new regulations.

(6) The proposed rules do not expand existing regulations; however, the proposed rules do limit existing regulations as described above.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to recommend adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure. The amendments are further proposed under the authority of Texas Occupations Code §601.254.

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

§187.87. Definitions.

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

(1) Board--Texas Medical Board.

(2) Emergency care--has the meaning assigned by the Texas Insurance Code, §1301.155(a).

(3) Emergency care provider--has the meaning assigned by the Texas Insurance Code, §1467.001(2-b).

(4) [~~(2)~~] Enrollee--An individual who is eligible to receive benefits through a preferred provider benefit plan offered by an insurer under the Insurance Code, Chapter 1301, or a health benefit plan, other than an HMO plan, under the Texas Insurance Code, Chapter 1551, 1575, or 1579.

(5) [~~(3)~~] Facility--has the meaning assigned by §324.001, Texas Health and Safety Code.
[~~a hospital, emergency clinic, outpatient clinic, birthing center, ambulatory surgical center, or other facility providing health care services.~~]

[~~(4) Facility-based physician ---a radiologist, an anesthesiologist, a pathologist, an emergency department physician; a neonatologist; or an assistant surgeon:~~]

[~~(A) to whom the facility has granted clinical privileges; and~~]

[~~(B) who provides services to patients of the facility pursuant to those clinical privileges.~~]

(6) Facility-based provider--has the meaning assigned by §1467.001, Texas Insurance Code.

(7) Health care practitioner--for the purposes of this subchapter means an individual who is licensed to provide healthcare services under the jurisdiction of the Board or Texas Physician Assistant Board.

(8) [~~(5)~~] Mediation--has the meaning assigned by §1467.001 of the Texas Insurance Code. [~~a process in which an impartial mediator facilitates and promotes agreement between the insurer offering a preferred provider benefit plan or the administrator and a facility-based physician or the physician's representative to settle a health benefit claim of an enrollee pursuant to Chapter 1467 of the Texas Insurance Code.~~]

(9) [~~(6)~~] Mediator--an impartial person who is appointed by the chief administrative law judge at the State Office of Administrative Hearings to conduct a mediation, pursuant to 1 TAC Chapter 167 (relating to Dispute Resolution Process Applicable to Certain Consumer Health Benefit Disputes), and Chapter 1467 of the Texas Insurance Code.

(10) [~~(7)~~] Out-of-network health benefit claim--A claim for payment for medical or health care services or supplies or a combination thereof that are furnished by a facility-based provider or emergency care provider [~~a physician~~] that is not contracted as a preferred provider with a preferred provider benefit plan or contracted with an administrator.

(11) [~~(8)~~] Qualified health benefit claim--A health benefit claim that meets the criteria under 28 TAC §21.5010(a) and (b) (relating to Qualified Claim Criteria).

§187.88. Complaint Process and Resolution.

(a) A complaint relating to a mediation may be filed by a mediator with the Board against an emergency care or [~~a~~] facility-based provider [~~physician~~] for bad faith mediation. Conduct constituting bad faith mediation means [~~includes~~]:

(1) failing to participate in a mediation;

(2) failing to provide information the mediator believes is necessary to facilitate an agreement; or

(3) failing to designate a representative participating in the mediation with full authority to enter into any mediated agreement.

(b) If the enrollee is not satisfied with a mediated agreement, the enrollee may file a complaint with the Board against an emergency care or [~~a~~] facility-based provider [~~physician~~] for improper billing reached under Chapter 1467 of the Insurance Code.

(c) Investigations.

(1) All complaints shall be investigated pursuant to Chapter 179 of this title (relating to Investigations) and referred to an informal settlement conference if appropriate.

(2) In accordance with §311.0025 of the Health and Safety Code, the Board shall not open investigations relating to complaints of a single instance of improper billing, but shall open investigations on emergency care or facility-based providers [~~physicians~~] who are alleged to have engaged in improper billing in multiple instances.

(d) Penalties.

(1) Bad Faith Mediation. Except for good cause shown, on a report of a mediator and appropriate proof of bad faith mediation, the Board or appropriate advisory board shall impose an administrative penalty.

(2) Improper Billing. If the Board or an advisory board determines that an emergency care or [~~a~~] facility-based provider [~~physician~~] has engaged in improper billing practices, [~~the Board shall impose~~] sanctions consistent with §190.14 of this title (relating to Disciplinary Sanction Guidelines) shall be imposed.

§187.89. Notice of Availability of Mandatory Mediation.

(a) Notice at Time of Presentation.

(1) Except in the case of an emergency and if requested by an enrollee, a facility-based provider [~~physician~~] shall, before providing a health care or medical service or supply, provide a complete disclosure to an enrollee consistent with the notice requirements of §1467.051 of the Texas Insurance Code, that:

(A) explains that the facility-based provider [~~physician~~] does not have a contract with the enrollee's health benefit plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

(2) Failure to provide notice under this section shall not subject a licensee to disciplinary action.

(b) Notice in Billing Statement.

(1) A bill sent to an enrollee by an emergency care or facility-based provider for an out-of-network health benefit claim must contain an explanation of the mediation process that complies with the requirements set forth under §1467.0511 of the Texas Insurance Code. [~~physician who bills a patient covered by a preferred provider plan or a health benefit plan under Chapter 1551 of the Insurance Code that does not have a contract with the facility-based physician shall send a billing statement to the patient that contains a conspicuous, plain-language explanation of the mandatory mediation process under~~

~~Chapter 1467 of the Insurance Code if the amount for which the enrollee is responsible to the physician, after copayments, deductibles, and coinsurance, including the amount unpaid by the administrator or insurer, is greater than $500.~~]

(2) Failure to provide notice under this section shall not subject a licensee to disciplinary action. [~~The written notice shall include a reference to TDI's website about the mediation process - http://www.tdi.state.tx.us/consumer/cpmmediation.html.~~]

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

Filed with the Office of the Secretary of State on June 28, 2018.

TRD-201802856
Stephen "Brint" Carlton, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 305-7016

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS

SUBCHAPTER E. EMERGENCY ORDERS FOR UTILITIES

30 TAC §35.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of 30 TAC §35.202.

Background and Summary of the Factual Basis for the Proposed Repeal

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section Discussion

§35.202, Emergency Order for Rate Increase in Certain Situations

The commission proposes the repeal of §35.202. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed repeal is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed repeal.

The rulemaking is proposed in order to repeal an obsolete rule for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes the repeal of §35.202 as this section is obsolete and no longer applies to the commission.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred $1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of $184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated $499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was $3,567,824 and $3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was $3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government because of the implementation or administration of the proposed repeal.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated from the rulemaking will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking reflects the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a

local economy in a material way for the first five years that the proposal is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed repeal does not adversely affect rural communities in a material way for the first five years that the proposal is in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed repeal for the first five-year period the proposed repeal is in effect. The proposed rulemaking repeals an obsolete rule to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed repeal does not adversely affect a small or micro-business in a material way for the first five years the proposal is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does provide for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed repeal is in effect, the proposed repeal should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to repeal an obsolete TCEQ rule in Chapter 35 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to repeal the rule relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposal will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed repeal would not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed repeal constitutes a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of repealing an obsolete rule in Chapter 35 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the proposed rulemaking based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater

utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed repeal neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of the proposal. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to repeal an obsolete TCEQ rule relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§35.202. Emergency Order for Rate Increase in Certain Situations.

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

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802871
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 239-6812

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CHAPTER 37. FINANCIAL ASSURANCE
SUBCHAPTER O. FINANCIAL ASSURANCE FOR PUBLIC DRINKING WATER SYSTEMS AND UTILITIES

30 TAC §§37.5001, 37.5002, 37.5011

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§37.5001, 37.5002, and 37.5011.

Background and Summary of the Factual Basis for the Proposed Rules. The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion. In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain

terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

§37.5001, Applicability

The commission proposes to amend §37.5001 to remove "retail public utilities" and the reference to Chapter 291. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

§37.5002, Definitions

The commission proposes to amend §37.5002 to remove the reference to §291.3. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

§37.5011, Financial Assurance for a Public Water System or Retail Public Utility

The commission proposes to amend §37.5011 to remove "or Retail Public Utility" from the section title and language in subsections (b) and (c) which pertain to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to amend rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes to amend §§37.5001, 37.5002, and 37.5011 to remove references to Chapter 291, §291.3, and retail public utilities; and remove any language which pertains to functions that were transferred from the commission to the PUC through HB 1600 and SB 567. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred $1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of $184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated $499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was $3,567,824 and $3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was $3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rules are not expected to result in fiscal implications for businesses or individuals. The proposed rules amend current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend rules for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 37 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 37 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however,

commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

§37.5001. Applicability.

This subchapter applies to public water systems [~~and retail public utilities~~] required to provide evidence of financial assurance under Chapter 290 of this title (relating to Public Drinking Water)[~~, or Chapter 291 of this title (relating to Utility Regulation)~~].

§37.5002. Definitions.

For definitions of words and terms and other definitions not found in Subchapter A of this chapter (relating to General Financial Assurance Requirements) [~~Chapter, relating to General Financial Assurance Requirements,~~] see §290.38[~~,~~] of this title (relating to Definitions). [~~Rules and Regulations for Public Water Systems), and §291.3, of this title (relating to Definitions of Terms).~~]

§37.5011. Financial Assurance for a Public Water System [~~or Retail Public Utility~~].

(a) Financial assurance demonstrations shall comply with the wordings of the mechanisms as described in Subchapter A of this chapter (relating to General Financial Assurance Requirements), Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), and Subchapter D of this chapter (relating to Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), except operation should be substituted for closure.

(b) The prospective owner or operator of a public water system may be ordered to provide adequate financial assurance to operate the system as specified in §290.39(f) of this title (relating to General Provisions). A public water system that was constructed without approval or has a history of noncompliance or is subject to commission enforcement action as specified in §290.39(n) of this title, may be required to provide financial assurance to operate the system in accordance with applicable laws and rules. [~~Financial assurance may be required of an applicant requesting approval for a certificate or a certificate amendment or a person establishing, purchasing or acquiring a retail public utility as specified in §291.102(d) of this title (relating to Criteria for Considering and Granting Certificates or Amendments), and §291.109(c) of this title (relating to Report of Sale, Merger, Etc: Investigation; Disallowance of Transaction). A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial assurance as specified in §291.111(c) of this title (relating to Purchase of Voting Stock in Another Utility). The commission may order a utility that has failed to provide continuous and adequate service to provide financial assurance to ensure that the system will be operated as required by §291.114 of this title (relating to Requirements to Provide Continuous and Adequate Service). Such financial assurance will allow for payment of improvements and repairs to the water or sewer system.~~]

[~~(c) If rate increases or customer surcharges are determined by the executive director to be an acceptable form for demonstrating financial assurance in accordance with §290.39(n)(3) of this title, such funds shall be deposited into an escrow account with an escrow agent that has the authority to act as an escrow agent and whose escrow operations are regulated and examined by a federal or state agency. At least annually a statement of the account shall be submitted to the executive director.~~]

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

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802872
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 239-6812

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CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§50.31, 50.45, 50.131, and 50.145.

Background and Summary of the Factual Basis for the Proposed Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs are proposed for removal, subsequent paragraphs are renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§50.31, Purpose and Applicability

The commission proposes to amend §50.31 to remove subsection (b)(4) and (12). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

§50.45, Corrections to Permits

The commission proposes to amend §50.45 to remove subsection (b)(4) and (5). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

§50.131, Purpose and Applicability

The commission proposes to amend §50.131 to remove subsection (b)(4) and (12). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

§50.145, Corrections to Permits

The commission proposes to amend §50.145 to remove subsection (b)(4) and (5). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

Fiscal Note: Costs to State and Local Government 1

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to amend rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes to amend §§50.31, 50.45, 50.131, and §50.145.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred $1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employee (FTEs) to the PUC. In addition, there was also a transfer of $184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated $499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Years 2016 and 2017 was $3,567,824 and $3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was $3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend TCEQ's rules for a program

transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend Chapter 50 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 50 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room

201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Brian Dickey, TCEQ Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

SUBCHAPTER C. ACTION BY EXECUTIVE DIRECTOR

30 TAC §50.31, §50.45

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§50.31. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

[~~(4) certificates of convenience and necessity;~~]

(4) [~~(5)~~] district matters under Texas Water Code (TWC), Chapters 49 - 66 [~~of the Texas Water Code~~];

(5) [~~(6)~~] districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(6) [~~(7)~~] extensions of time to commence or complete construction;

(7) [~~(8)~~] industrial and hazardous waste permits;

(8) [~~(9)~~] municipal solid waste permits;

(9) [~~(10)~~] on-site waste water disposal system permits;

(10) [~~(11)~~] radioactive material permits or licenses;

[~~(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;~~]

(11) [~~(13)~~] underground injection control permits;

(12) [~~(14)~~] water rights permits;

(13) [~~(15)~~] wastewater permits;

(14) [~~(16)~~] weather modification measures permits;

(15) [~~(17)~~] driller licenses under TWC [~~Texas Water Code~~], Chapter 32;

(16) [~~(18)~~] pump installer licenses under TWC [~~Texas Water Code~~], Chapter 33;

(17) [~~(19)~~] irrigator or installer registrations under TWC [~~Texas Water Code~~], Chapter 34;

(18) [~~(20)~~] municipal management district matters under Texas Local Government Code, Chapter 375;

(19) [~~(21)~~] determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency; and

(20) [~~(22)~~] certification of an organization that is installing plumbing in a "self-help" project, in a county any part of which is within 50 miles of an international border.

(c) This subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program);

(3) air quality standard exemptions;

(4) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(5) district matters under TWC [~~Texas Water Code~~], Chapters 49 - 66, as follows:

(A) an appeal under TWC [~~Texas Water Code~~], §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC [~~Texas Water Code~~], Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC [~~Texas Water Code~~], §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC [~~Texas Water Code~~], §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under TWC [~~Texas Water Code~~], §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under TWC [~~Texas Water Code~~], §54.030 for conversion of a district to a municipal utility district;

(6) emergency or temporary orders or temporary authorizations;

(7) actions of the executive director under Chapters 101, 111 - 115, 117 and 118 [~~111, 112, 113, 114, 115, 117, 118 and 119~~] of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants [~~Control of Air Pollution From Toxic Materials~~]; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes[~~; and Control of Air Pollution From Carbon Monoxide~~]);

(8) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(9) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection [~~Notwithstanding subsections~~] (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.39(b) - (f) of this title (relating to Motion for Reconsideration) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

§50.45. Corrections to Permits.

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program). The executive director, on his own motion or at the request of the permittee, may make a non-substantive [~~nonsubstantive~~] correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue non-substantive [~~nonsubstantive~~] permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

[~~(4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;~~]

[~~(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;~~]

(4) [~~(6)~~] to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(5) [~~(7)~~] to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(6) [~~(8)~~] to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(7) [~~(9)~~] to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(8) [~~(10)~~] to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.

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

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SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131, §50.145

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§50.131. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission. This subchapter does not affect the executive director's authority to act on an application where that authority is delegated elsewhere.

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 to certifications of Water Quality Management Plan (WQMP) updates. Applications that are administratively complete before September 1, 1999 are subject to Subchapter B of this chapter (relating to Action by the Commission). Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

[(4) certificates of convenience and necessity;]

(4) [(5)] district matters under Texas Water Code (TWC), Chapters 49 - 66 [of the Texas Water Code];

(5) [(6)] districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(6) [(7)] extensions of time to commence or complete construction;

(7) [(8)] industrial and hazardous waste permits;

(8) [(9)] municipal solid waste permits;

(9) [(10)] on-site wastewater disposal system permits;

(10) [(11)] radioactive waste or radioactive material permits or licenses;

[(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;]

(11) [(13)] underground injection control permits;

(12) [(14)] water rights permits;

(13) [(15)] wastewater permits;

(14) [(16)] weather modification measures permits;

(15) [(17)] driller licenses under TWC [Texas Water Code], Chapter 32;

(16) [(18)] pump installer licenses under TWC [Texas Water Code], Chapter 33;

(17) [(19)] irrigator or installer registrations under TWC [Texas Water Code], Chapter 34; and

(18) [(20)] municipal management district matters under Texas Local Government Code, Chapter 375.

(c) In addition to those things excluded from coverage under [this chapter in] §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under TWC [Texas Water Code], Chapters 49 - 66, as follows:

(A) an appeal under TWC [Texas Water Code], §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC [Texas Water Code], Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC [Texas Water Code], §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC [Texas Water Code], §54.239, of a board decision involving the cost, purchase, or use of facilities; or

(E) an application under TWC [Texas Water Code], §54.030 for conversion of a district to a municipal utility district;

(5) actions of the executive director under Chapters 101, 111 - 115, 117, and 118 [111, 112, 113, 114, 115, 117, 118, and 119] of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants [Control of Air Pollution From Toxic Materials]; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes[; and Control of Air Pollution From Carbon Monoxide]);

(6) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(7) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection [Notwithstanding subsections] (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

§50.145. Corrections to Permits.

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program). The executive director, on his own motion or at the request of the permittee, may make a non-substantive [nonsubstantive] correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue non-substantive [nonsubstantive] permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

[(4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;]

[(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;]

(4) [(6)] to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(5) [(7)] to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(6) [(8)] to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(7) [(9)] to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(8) [(10)] to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.

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

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §55.1, 55.27, 55.101, and 55.250.

Background and Summary of the Factual Basis for the Proposed Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections are proposed for removal, subsequent subsections are re-lettered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§55.1, Applicability

The commission proposes to amend §55.1(a) to remove the reference to Texas Water Code (TWC), §12.013 and Chapter 13. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable. Additionally, the commission proposed to remove the reference to TWC, §11.036 and §11.041, because Chapter 55, Subchapters D and G do not apply to TWC, §11.036 and §11.041.

§55.27, Commission Action on Hearing Request

The commission proposes to amend §55.27 to remove subsection (d), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also proposes to remove §55.27(e), because the language in the subsection is obsolete due to the repeal of Chapter 80, Subchapter E in September 1999.

§55.101, Applicability

The commission proposes to amend §55.101(g)(5) to remove the reference to TWC, §12.013 and Chapter 13 and revise the sentence accordingly to account for the removal. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable. Additionally, the commission proposes to remove the requirements for the executive director to review hearing requests, determine the sufficiency of hearing requests, and refer the application to the chief clerk for hearing processing, because those requirements are not applicable to TWC, §11.036 and §11.041, petitions.

§55.250, Applicability

The commission proposes to amend §55.250 to remove the reference to TWC, §12.013 and Chapter 13 and revise the sentence accordingly to account for the removal. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

Fiscal Note: Costs to State and Local Government 1

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to amend rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes to amend §§55.1, 55.27, 55.101, and 55.250.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred $1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of $184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated $499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was $3,567,824 and $3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was $3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity program to the PUC.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend rules for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 55 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend the rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy

as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 55 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800)-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

SUBCHAPTER A. APPLICABILITY AND DEFINITIONS

30 TAC §55.1

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to

carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§55.1. Applicability.

(a) This chapter is divided into subchapters, each of which governs only certain specific types of applications. This subchapter and Subchapter B of this chapter (relating to Hearing Requests, Public Comment) describe the hearing request and comment procedures which will continue to apply to applications declared administratively complete before September 1, 1999. Subchapter D of this chapter (relating to Applicability and Definitions) describes the applications that will be subject to Subchapters E, F, and G of this chapter [~~title~~] (relating to Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications). Subchapters E and F of this chapter establish public comment, public meeting, request for reconsideration and contested case hearing procedures that apply to applications filed under Texas Water Code (TWC), Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382 that are declared administratively complete on or after September 1, 1999. Subchapter G of this chapter addresses requests for contested case hearing and public comment procedures on applications filed under other statutory provisions that are declared administratively complete on or after September 1, 1999[~~, except applications filed under Texas Water Code, Chapter 13 and §§11.036, 11.041 and 12.013~~].

(b) Hearing requests and comments regarding any permit application that is declared administratively complete before September 1, 1999 are subject to this subchapter and Subchapter B of this chapter.

(c) This subchapter and Subchapter B of this chapter do not apply to hearing requests on:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting under Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project; and

(4) applications for weather modification licenses or permits under TWC [~~Texas Water Code~~], Chapter 18.

(d) This subchapter and Subchapter B of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations) [~~that chapter~~];

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(6) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(7) applications where the opportunity for a contested case hearing does not exist under the law.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER B. HEARING REQUESTS, PUBLIC COMMENT

30 TAC §55.27

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§55.27. Commission Action on Hearing Request.

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the Texas Administrative Procedure Act (APA) [~~APA~~]. The commission will evaluate the hearing request at the scheduled commission meeting, and may:

(1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;

(2) determine that a hearing request does not meet the requirements of this subchapter, and refer the application to a public meeting to develop public comment before acting on the application;

(3) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to State Office of Administrative Hearings (SOAH) [~~SOAH~~] for a hearing; or

(4) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA.

(b) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director;

(2) made by an affected person if the request:

(A) is reasonable;

(B) is supported by competent evidence;

(C) complies with the requirements of §55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment);

(D) is timely filed with the chief clerk; and

(E) is pursuant to a right to hearing authorized by law;

(3) for an air quality permit, made by a legislator in the general area of the facility if the request:

(A) is reasonable;

(B) complies with the requirements of §55.21 of this title, except for §55.21(d)(2) - (4) of this title [subsection (c)(2)-(4)];

(C) is timely filed with the chief clerk; and

(D) is pursuant to a right to hearing authorized by law.

(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.

[(d) The executive director shall determine the sufficiency of hearing requests on utility matters listed in this subsection. If a hearing request meets the requirements in this subsection, the executive director shall refer the hearing request to the chief clerk. The executive director shall review hearing requests concerning the following matters and shall use the specified standards for reviewing the requests.]

[(1) If a utility files a statement of intent to change rates under Texas Water Code, §13.187, the executive director shall evaluate any complaints or hearing requests received and determine if a hearing is required.]

[(2) If a person files an application or petition concerning a certificate of convenience and necessity under Texas Water Code, Chapter 13, Subchapter G, the executive director shall evaluate any complaints or hearing requests and determine if a hearing is required.]

[(3) If a person files an appeal under Texas Water Code, §13.043, invoking the commission's appellate jurisdiction over water, sewer, or drainage rates, the executive director shall evaluate the appeal and determine if a hearing is required.]

[(e) During a commission meeting, the commission may determine whether the application should be processed under the requirements of Chapter 80, Subchapter E of this title (relating to Freezing the Process). The commission may consider the number and sophistication of the parties or potential parties, the expected length of the hearing, and the complexity of the issues.]

(d) [(f)] A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(e) [(g)] If a hearing request is denied, the procedures contained in §80.272 [§80.271] of this title (relating to Motion for Rehearing) apply. A motion for rehearing in such a case must be filed no earlier than, and no more than 20 days after, the date the person or his attorney of record is notified of the commission's final decision or order on the application. If the motion is denied under §80.272 of this title [§80.271] and §80.273 of this title (relating to [Motion for Rehearing and] Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

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

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SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

30 TAC §55.101

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§55.101. Applicability.

(a) This subchapter and Subchapters E - G [Subchapters D - G] of this chapter (relating to [Applicability and Definitions;] Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.

(b) This subchapter and Subchapters E - G [Subchapters D - G] of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.

(c) This subchapter and Subchapters E and F [Subchapters D - F] of this chapter apply only to applications filed under Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under TWC [Texas Water Code], Chapters 26, 27, and 32 and THSC [Texas Health and Safety Code], Chapters 361 and 382.

(e) This subchapter and Subchapters E and F [Subchapters D - F] of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Pro-

cessing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(f) This subchapter and Subchapters E - G [~~Subchapters D - G~~] of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by [~~By~~] Rule) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project;

(4) applications for Class I injection well permits used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under TWC [~~Texas Water Code~~], §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(5) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under TWC, §27.025 [~~Texas Water Code,~~ §27.023], concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals; and

(6) applications where the opportunity for a contested case hearing does not exist under other laws.

(g) This subchapter and Subchapters E - G [~~Subchapters D - G~~] of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations) [~~that chapter~~];

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under TWC [~~Texas Water Code, Chapter 13 and Texas Water Code~~], [§]§11.036[~~,~~] or §11.041[~~, or 12.013. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law, and may refer the application to the chief clerk for hearing processing~~]. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings (SOAH) under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a SOAH [~~State Office of Administrative Hearings~~] hearing on an application subject to this provision are all those issues that are material and relevant under the law;

(6) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(7) applications for initial issuance of voluntary emissions reduction permits under THSC [~~Texas Health and Safety Code~~], §382.0519;

(8) applications for initial issuance of permits for electric generating facility permits under Texas Utilities Code, §39.264;

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under THSC [~~Texas Health and Safety Code~~], §382.05194;

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-Injection Units Registration); and

(12) applications where the opportunity for a contested case hearing does not exist under other laws.

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

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SUBCHAPTER G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

30 TAC §55.250

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§55.250. Applicability.

This subchapter applies to applications filed with the commission except applications filed under Texas Water Code (TWC), Chapter 26 or 27, Texas Health and Safety Code, Chapter 361 or 382, [~~Texas Water Code, Chapter 13,~~] or TWC, [~~Texas Water Code,~~ §]§11.036[~~,~~] or §11.041[~~, or 12.013~~]. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

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

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CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§80.3, 80.17, 80.105, and 80.109.

Background and Summary of the Factual Basis for the Proposed Rules. The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections and paragraphs are proposed for removal, subsequent subsections and paragraphs are re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§80.3, Judges

The commission proposes to amend §80.3 to remove paragraph (15), because the paragraph pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§80.17, Burden of Proof

The commission proposes to amend §80.17 to remove subsection (b), because the subsection pertains to the burden of proof in reviewing rates charged pursuant to a contract. The setting of rates pursuant to Texas Water Code (TWC), Chapter 11 was transferred from the commission to the PUC on September 1, 2014.

§80.105, Preliminary Hearings

The commission proposes to amend §80.105(b)(2)(B) to remove the reference to TWC, §12.013. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

§80.109, Designation of Parties

The commission proposes to amend §80.109(b)(1)(A) to remove the reference to TWC, §12.013. With the transfer of these functions from the commission to the PUC in HB 1600, this language is no longer applicable.

Fiscal Note: Costs to State and Local Government 1

Jené Bearse, Analyst in Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to modify rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The amendments to §§80.3, 80.17, 80.105, and 80.109 relate to contested case hearings and will modify rules to ensure that they are applicable to the commission as a result of the transfer of the responsibility for the economic regulation of water and wastewater utilities to the PUC.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred $1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full time employees (FTEs) to the PUC. In addition, there was also a transfer of $184,000 each year to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated $499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs each fiscal year to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local econ-

omy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend TCEQ's rules for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 80 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 80 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater

utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

SUBCHAPTER A. GENERAL RULES

30 TAC §80.3, §80.17

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§80.3. Judges.

(a) Applicability and delegation.

(1) Any application that is declared administratively complete before September 1, 1999 is subject to this section.

(2) The commission delegates to the State Office of Administrative Hearings [~~SOAH~~] the authority to conduct hearings designated by the commission.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(c) Judges shall have authority to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the jurisdiction of the commission;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate and align parties and establish the order for presentation of evidence, except that the executive director and the public interest counsel shall not be aligned with any other party;

(6) examine and administer oaths to witnesses;

(7) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents;

(8) authorize the taking of depositions and compel other forms of discovery;

(9) set prehearing conferences and issue prehearing orders;

(10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(11) limit testimony to matters under the commission's jurisdiction;

(12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions; and

[(15) issue interim rate orders under Texas Water Code, Chapter 13;]

(15) [(16)] exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

§80.17. Burden of Proof.

(a) The burden of proof is on the moving party by a preponderance of the evidence, except as provided in subsection [subsections] (b) [- (d)] of this section.

[(b) Section 291.136 of this title (relating to Burden of Proof) governs the burden of proof in a proceeding related to a petition to review rates charged pursuant to a written contract for the sale of water for resale filed under Texas Water Code, Chapter 11.]

(b) [(c)] In an enforcement case, the executive director has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions. The respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. Any party submitting facts relevant to the factors prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty has the burden of proving those facts by a preponderance of the evidence.

(c) [(d)] In contested cases regarding a permit application filed with the commission on or after September 1, 2015, and referred under Texas Water Code, §5.556 or §5.557:

(1) the filing of the administrative record as described in §80.118(c) of this title (relating to Administrative Record) establishes a prima facie demonstration that the executive director's draft permit meets all state and federal legal and technical requirements, and, if issued consistent with the executive director's draft permit, would protect human health and safety, the environment, and physical property;

(2) a party may rebut the presumption in paragraph (1) of this subsection by presenting evidence regarding the referred issues demonstrating that the draft permit violates a specifically applicable state or federal legal or technical requirement; and

(3) if a rebuttal case is presented by a party under paragraph (2) of this subsection, the applicant and executive director may present additional evidence to support the executive director's draft permit.

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

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SUBCHAPTER C. HEARING PROCEDURES

30 TAC §80.105, §80.109

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§80.105. Preliminary Hearings.

(a) After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding. A preliminary hearing is not required in an enforcement matter, except in those under federally authorized underground injection control or Texas Pollutant Discharge Elimination System programs. A preliminary hearing is required for applications referred to the State Office of Administrative Hearings under §55.210 of this title (relating to Direct Referrals).

(b) If jurisdiction is established, the judge shall:

(1) name the parties;

(2) accept public comment in the following matters:

(A) enforcement hearings; and

(B) applications under Texas Water Code (TWC), §11.036 or §11.041 and TWC, Chapter 13 [and TWC, §§11.036, 11.041, or 12.013];

(3) establish a docket control order designed to complete the proceeding within the maximum expected duration set by the commission. The order should include a discovery and procedural schedule including a mechanism for the timely and expeditious resolution of discovery disputes; and

(4) allow the parties an opportunity for settlement negotiations.

(c) When agreed to by all parties in attendance at the preliminary hearing, the judge may proceed with the evidentiary hearing on the same date of the first preliminary hearing.

(d) One or more preliminary hearings may be held to discuss:

(1) formulating and simplifying issues;

(2) evaluating the necessity or desirability of amending pleadings;

(3) all pending motions;

(4) stipulations;

(5) the procedure at the hearing;

(6) specifying the number and identity of witnesses;

(7) filing and exchanging prepared testimony and exhibits;

(8) scheduling discovery;

(9) setting a schedule for filing, responding to, and hearing of dispositive motions; and

(10) other matters that may expedite or facilitate the hearing process.

(e) For applications directly referred under §55.210 of this title, a preliminary hearing may not be held until the executive director's response to public comment has been provided.

§80.109. Designation of Parties.

(a) Determination by judge. All parties to a proceeding shall be determined at the preliminary hearing or when the judge otherwise designates. To be admitted as a party, a person must have a justiciable

interest in the matter being considered and must, unless the person is specifically named in the matter being considered, appear at the preliminary hearing in person or by representative and seek to be admitted as a party. After parties are designated, no person will be admitted as a party except upon a finding that good cause and extenuating circumstances exist and that the hearing in progress will not be unreasonably delayed.

(b) Parties.

(1) The executive director is a mandatory party to all commission proceedings concerning matters in which the executive director bears the burden of proof, and in the following commission proceedings:

(A) matters concerning Texas Water Code (TWC), [§]§11.036[~~,~~] and §11.041[~~, and 12.013~~]; TWC, Chapters 13, 35, 36, and 49 - 66; and Texas Local Government Code, Chapters 375 and 395;

(B) matters arising under Texas Government Code, Chapter 2260 and Chapter 11, Subchapter D of this title (relating to Resolution of Contract Claims); and

(C) matters under TWC, Chapter 26, Subchapter I, and Chapter 334, Subchapters H and L of this title (relating to Reimbursement Program and Overpayment Prevention).

(2) In addition to paragraph (1) of this subsection [~~(b)(1) of this section~~], the executive director is always a party in contested case hearings concerning permitting matters, pursuant to, and in accordance with, the provisions of §80.108 of this title (relating to Executive Director Party Status in Permit Hearings).

(3) The public interest counsel of the commission is a party to all commission proceedings.

(4) The applicant is a party in a hearing on its application.

(5) Affected persons shall be parties to hearings on permit applications, based upon the standards set forth in §55.29 and §55.203 of this title (relating to Determination of Affected Person). Regardless of [~~Notwithstanding~~] any other law, a state agency, except a river authority, may not be a party to a hearing on an application received by the commission on or after September 1, 2011 unless the state agency is the applicant.

(6) The parties to a contested enforcement case include:

(A) the respondent(s);

(B) any other parties authorized by statute; and

(C) in proceedings alleging a violation of or failure to obtain an underground injection control or Texas Pollutant Discharge Elimination System permit, or a state permit for the same discharge covered by a National Pollutant Discharge Elimination System (NPDES) permit that has been assumed by the state under NPDES authorization, any other party granted permissive intervention by the judge. In exercising discretion whether to permit intervention, the judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(7) The parties to a hearing upon a challenge to commission rules include the person(s) challenging the rule and any other parties authorized by statute.

(8) The parties to a permit revocation action initiated by a person other than the executive director shall include the respondent and the petitioner.

(9) The parties to a post-closure order contested case are limited to:

(A) the executive director;

(B) the applicant(s); and

(C) the Public Interest Counsel.

(c) Alignment of participants. Participants (both party and non-party) may be aligned according to the nature of the proceeding and their relationship to it. The judge may require participants of an aligned class to select one or more persons to represent them in the proceeding. Unless otherwise ordered by the judge, each group of aligned participants shall be considered to be one party for the purposes of §80.115 of this title (relating to Rights of Parties) for all purposes except settlement.

(d) Effect of postponement. If a hearing is postponed for any reason, any person already designated as a party retains party status.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 239-6812

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CHAPTER 281. APPLICATIONS PROCESSING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §281.2 and §281.17; and the repeal of §281.16.

Background and Summary of the Factual Basis for the Proposed Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs are proposed for removal, subsequent paragraphs are

renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§281.2, Applicability

The commission proposes to amend §281.2 to remove paragraph (8), because the paragraph pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§281.16, Applications for Certificates of Convenience and Necessity

The commission proposes the repeal of §281.16. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§281.17, Notice of Receipt of Application and Declaration of Administrative Completeness

The commission proposes to amend §281.17(d) to remove the reference to §281.16. With the transfer of this function from the commission to the PUC in HB 1600 and SB 567, this reference is no longer required.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to repeal or modify obsolete rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes this rulemaking to remove any language which pertains to functions that were transferred from the commission to PUC through HB 1600 and SB 567.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred $1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of $184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated $499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was $3,567,824 and $3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was $3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking amends and repeals obsolete TCEQ's rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends and repeals obsolete TCEQ's rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend and repeal TCEQ's rules for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code,

§2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 281 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend and repeal the rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending and repealing obsolete TCEQ rules in Chapter 281 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend and repeal obsolete TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the submittal of comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §281.2, §281.17

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§281.2. Applicability.

This subchapter is [~~These sections are~~] applicable to the processing of:

(1) applications for new, amended, or renewed water use permits, certificates of adjudication and certified filings, and extensions of time to commence and/or complete construction of water use facilities;

(2) applications for new, amended, or renewed wastewater discharge permits, including subsurface area drip dispersal systems;

(3) applications for new, amended, or renewed injection well permits;

(4) applications for new, amended, or modified or renewed industrial solid and/or municipal hazardous waste permits filed under §335.2 and §335.43 of this title (relating to Permit Required) [~~and §335.43 of this title (relating to Permit Required)~~] or for new or amended compliance plans filed under §305.401 of this title (relating to Compliance Plan);

(5) applications for plan approval of reclamation projects (levees, etc.);

(6) applications for creation of water districts;

(7) water district applications and petitions requiring commission approval;

[~~(8) applications for new or amended certificates of convenience and necessity;~~]

(8) [~~(9)~~] applications for new, amended, or renewed municipal solid waste permits; and

(9) [~~(10)~~] applications for new, amended, or renewed radioactive material licenses.

§281.17. Notice of Receipt of Application and Declaration of Administrative Completeness.

(a) Applications for use of state water. If an application for the use of state water, other than for a permit under §297.13 of this title (relating to Temporary Permit under [~~Under~~] the Texas Water Code, [§]§11.138 [~~and 11.153 - 11.155~~]) or §297.17 of this title (relating to Emergency Authorization (Texas Water Code, §11.139)), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness. The executive director shall forward a copy of the statement to the chief clerk, along with a copy of the application.

(b) Applications for temporary permits to use state water. If an application for a temporary permit, other than a provisional temporary permit under §295.181 of this title (relating to Provisional Disposition of Application for Temporary Permit), for the use of state water is received containing the required information and attachments required by §281.4 of this title [~~as set forth therein~~], the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness, and shall forward a copy of the statement to the chief clerk.

(c) Applications for provisional temporary permits to use state water. When an application for a provisional temporary permit for the use of state water under §295.181 of this title, is received containing the information and attachments required by §281.4 of this title, the chief clerk shall cause notice of the receipt of the application and declaration of administrative completeness to be published in the *Texas Register*. The chief clerk may include in the notice other information concerning the disposition of the application.

(d) Other applications. Upon receipt of an application described in §281.2(2) or (5) - (9) [~~(11)~~] of this title (relating to Applicability), which contains the information and attachments required by [§]§281.5[~~,~~] and §281.6[~~, and 281.16~~] of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits; and Applications for Plan Approval of Reclamation Projects[~~; and Applications for Certificates of Convenience and Necessity~~]), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed injection well permit, for a new, amended, or renewed industrial solid waste permit, or for a new or amended compliance plan as described in §281.2(3) and (4) of this title, the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable

for publishing or mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed radioactive material license as described in Chapter 336 of this title (relating to Radioactive Substance Rules), the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable for mailing and shall forward that statement to the chief clerk prior to the expiration of the administrative review periods established in §281.3(d) of this title (relating to Initial Review). The chief clerk shall notify every person entitled to notification of a particular application under the rules of the commission.

(e) Notice requirements. The notice of receipt of the application and declaration of administrative completeness, or for applications for a new, amended, or renewed injection well permit, or for a new or amended compliance plan as described in §281.2(3) and (4) of this title, the notice of receipt of the application, shall contain the following information:

(1) the identifying number given the application by the executive director;

(2) the type of permit or license sought under the application;

(3) the name and address of the applicant and, if different, the location of the proposed facility;

(4) the date on which the application was submitted; and

(5) a brief summary of the information included in the application.

(f) Notice of application and draft permit. Nothing in this section shall be construed so as to waive the requirement of notice of the application and draft permit in accordance with Chapter 39 of this title (relating to Public Notice) for applications for radioactive material licenses, and for wastewater discharge, underground injection, hazardous waste, municipal solid waste, and industrial solid waste management permits.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 239-6812

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30 TAC §281.16

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§281.16. Applications for Certificates of Convenience and Necessity.

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

Filed with the Office of the Secretary of State on June 29, 2018.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 290. PUBLIC DRINKING WATER SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §290.38, §290.39

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §290.38 and §290.39.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rules are intended to implement statutory changes made by House Bill (HB) 1600 and Senate Bill (SB) 567 of the 83rd Texas Legislature, 2013, and SB 1842 of the 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 290 resulting from the proposed repeal of rules in 30 TAC Chapter 291.

SB 1842 amended Texas Health and Safety Code (THSC), §341.035(d) to include a Class A utility, as defined by Texas Water Code (TWC), §13.002, among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a certificate of convenience and necessity (CCN) under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current

Texas Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs are proposed, subsequent paragraphs are renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§290.38, Definitions

The commission proposes to amend the definition of "Affected utility" in §290.38(1) to update the cross-reference to exempt utility in amended §291.103. Additionally, the commission proposes to modify to correct the alphabetization of definitions in paragraphs (45) and (46) and paragraphs (64) and (65).

§290.39, General Provisions

The commission proposes §290.39(g)(4) to include a Class A utility, as defined by TWC, §13.002, among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to amend rules for a program transferred to PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and CCNs from the commission to the PUC.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred $1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of $184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated $499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Years 2016 and 2017 was $3,567,824 and $3,567,824. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was $3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and CCNs has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

The proposed rulemaking also implements changes made by SB 1842, which exempts certain Class A utilities from the requirements to file a business plan for a public drinking water system with the commission. No fiscal implications to the state or local government are expected from this proposed amendment.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rules are not expected to result in fiscal implications for businesses or individuals.

The amendments would modify rules as a result of the transfer of the responsibility for the economic regulation of water and wastewater utilities to the PUC. Staff and fees associated with the implementation of the program have been transferred from the TCEQ to the PUC.

The proposed rulemaking also implements changes made by SB 1842, which exempts certain Class A utilities from the requirements to file a business plan for a public drinking water system with the commission.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking modifies current rules to reflect the transfer of the regulation of water and wastewater rates, services, and CCNs to the PUC. The proposed rulemaking also implements changes made by SB 1842, which exempts certain Class A utilities from the requirements to file a business plan for a public drinking water system with the commission.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it re-

quire an increase or decrease in fees paid to the agency. The proposed rulemaking does not create or expand an existing regulation, but it does limit a regulation and may decreased the number of individuals affected by the regulation by exempting a Class A utility from having to submit a business plan for a public drinking water supply system to the commission. During the first five years that the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. SB 1842 amends THSC, §341.035(d) to exempt a Class A utility, as defined by TWC, §13.258 from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate. The specific intent of the proposed rulemaking is to amend Chapter 290 relating to the economic regulation of water and wastewater utilities and to include certain Class A utilities among the entities exempt from the requirement to file a business plan for a public drinking water system with the TCEQ. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC and to exempt certain Class A utilities from the requirement to file a business plan with the TCEQ.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities or THSC, Chapter 341 relating to the minimum standards of sanitation and health protection measures; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes these rules for the following purposes: 1) to amend TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; and 2) to exempt certain Class A utilities from the requirement to file a business plan for a public drinking water system with the TCEQ.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment in Chapter 290 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5) provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendments of TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this portion of the proposed rulemaking.

Further, the commission determined that amending TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities and exempting certain Class A utilities from the requirement to file a business plan with the TCEQ for a public drinking water system would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the proposed rules neither relate to, nor have any impact

on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities and to exempt certain Class A utilities from the requirement to file a business plan for a public drinking water system with the TCEQ. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013. Additionally, the proposed amendments implement Senate Bill 1842 passed by the 85th Texas Legislature, 2017.

§290.38. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Water Dictionary: A Comprehensive Reference of Water Terminology,* prepared by the American Water Works Association.

(1) Affected utility--A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103[~~(d)(1)~~] of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer:

(A) in a county with a population of 3.3 million or more; or

(B) in a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more.

(2) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

(3) American National Standards Institute (ANSI) standards--The standards of the American National Standards Institute, Inc.

(4) American Society of Mechanical Engineers (ASME) standards--The standards of the ASME.

(5) American Water Works Association (AWWA) standards--The latest edition of the applicable standards as approved and published by the AWWA.

(6) Approved laboratory--A laboratory approved by the executive director to analyze water samples to determine their compliance with certain maximum or minimum allowable constituent levels.

(7) ASTM International standards--The standards of ASTM International (formerly known as the American Society for Testing and Materials).

(8) Auxiliary power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(9) Bag filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(10) Baseline performance--In reference to a membrane treatment facility, the detailed assessment of observed operational conditions at the time the membrane facility is placed in service for the purpose of tracking changes over time and determining when maintenance or service is required. Examples of parameters where baseline performance data is collected include: net driving pressure, normalized permeate flow, salt rejection, and salt passage.

(11) Cartridge filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an

engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(12) Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels. After June 30, 2008, laboratories must be accredited, not certified, in order to perform sample analyses previously performed by certified laboratories.

(13) Challenge test--A study conducted to determine the removal efficiency (log removal value) of a device for a particular organism, particulate, or surrogate.

(14) Chemical disinfectant--Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(15) Community water system--A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(16) Connection--A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

(A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption);

(B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or

(C) the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(17) Contamination--The presence of any foreign substance (organic, inorganic, radiological, or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

(18) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(19) Direct integrity test--A physical test applied to a membrane unit in order to identify and isolate integrity breaches/leaks that could result in contamination of the filtrate.

(20) Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water.

(21) Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(22) Distribution system--A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

(23) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "drinking water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(24) Drinking water standards--The commission rules covering drinking water standards in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(25) Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(26) Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 35 pounds per square inch.

(27) Emergency power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

(28) Extended power outage--A power outage lasting for more than 24 hours.

(29) Filtrate--The water produced from a filtration process; typically used to describe the water produced by filter processes such as membranes.

(30) Flux--The throughput of a pressure-driven membrane filtration system expressed as flow per unit of membrane area. For example, gallons per square foot per day or liters per hour per square meter.

(31) Grantee--For purposes of this chapter, any person receiving an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(32) Grantor--For purposes of this chapter, any person who conveys an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(33) Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(34) Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*;

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions; or

(C) site-specific characteristics including measurements of water quality parameters, well construction details, existing geological attributes, and other features that are similar to groundwater sources that have been identified by the executive director as being under the direct influence of surface water.

(35) Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(36) Human consumption--Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(37) Indirect integrity monitoring--The monitoring of some aspect of filtrate water quality, such as turbidity, that is indicative of the removal of particulate matter.

(38) Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a) - (f) of this title (relating to Water Treatment).

(39) Interconnection--A physical connection between two public water supply systems.

(40) International Fire Code (IFC)--The standards of the International Code Council.

(41) Intruder-resistant fence--A fence six feet or greater in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle with the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(42) L/d ratio--The dimensionless value that is obtained by dividing the length (depth) of a granular media filter bed by the weighted effective diameter "d" of the filter media. The weighted effective diameter of the media is calculated based on the percentage of the total bed depth contributed by each media layer.

(43) Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(44) Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as $\log_{10}$ (i.e., $\log_{10}$ (feed concentration) - $\log_{10}$ (filtrate concentration)).

~~(45) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.~~

(45) [~~(46)~~] Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

(46) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(47) Membrane filtration--A pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test; includes the following common membrane classifications microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO), as well as any "membrane cartridge filtration" (MCF) device that satisfies this definition.

(48) Membrane $LRV_{C\text{-}Test}$--The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of log removal values (LRVs) obtained during challenge testing, with one representative LRV established per module tested.

(49) Membrane module--The smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(50) Membrane sensitivity--The maximum log removal value that can be reliably verified by a direct integrity test.

(51) Membrane unit--A group of membrane modules that share common valving, which allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(52) Milligrams per liter (mg/L)--A measure of concentration, equivalent to and replacing parts per million in the case of dilute solutions.

(53) Monthly reports of water works operations--The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(54) National Fire Protection Association (NFPA) standards--The standards of the NFPA.

(55) NSF International--The organization and the standards, certifications, and listings developed by NSF International (formerly known as the National Sanitation Foundation) related to drinking water.

(56) Noncommunity water system--Any public water system which is not a community system.

(57) Nonhealth hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

(58) Nontransient, noncommunity water system--A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(59) Pass--In reference to a reverse osmosis or nanofiltration membrane system, stages of pressure vessels in series in which the permeate from one stage is further processed in a following stage.

(60) Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(61) Plumbing inspector--Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(62) Plumbing ordinance--A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) the International Plumbing Code; or

(B) the Uniform Plumbing Code.

(63) Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

~~(64) Potable water service line--The section of pipe between the potable water main and the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.~~

(64) [~~(65)~~]Potable water main--A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

(65) Potable water service line--The section of pipe between the potable water main and the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

(66) Potential contamination hazard--A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

(A) bypass arrangements;

(B) jumper connections;

(C) removable sections or spools; and

(D) swivel or changeover assemblies.

(67) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(68) psi--Pounds per square inch.

(69) Public drinking water program--Agency staff designated by the executive director to administer the Safe Drinking Water Act and state statutes related to the regulation of public drinking water. Any report required to be submitted in this chapter to the executive director must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(70) Public health engineering practices--Requirements in this chapter or guidelines promulgated by the executive director.

(71) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(72) Quality Control Release Value (QCRV)--A minimum quality standard of a non-destructive performance test established by the manufacturer for membrane module production that ensures that the module will attain the targeted log removal value demonstrated during challenge testing.

(73) Reactor Validation Testing--A process by which a full-scale ultraviolet (UV) reactor's disinfection performance is determined relative to operating parameters that can be monitored. These parameters include flow rate, UV intensity as measured by a UV sensor and the UV lamp status.

(74) Resolution--The size of the smallest integrity breach that contributes to a response from a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water.

(75) Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding. For an example, see commission Form 20698.

(76) Sanitary survey--An onsite review of a public water system's adequacy for producing and distributing safe drinking water by evaluating the following elements: water source; treatment; distribution system; finished water storage; pump, pump facilities, and controls; monitoring, reporting, and data verification; system management, operation and maintenance; and operator compliance.

(77) Sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water; also applies to some continuous indirect integrity monitoring methods.

(78) Service line--A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(79) Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(80) Significant deficiency--Significant deficiencies cause, or have the potential to cause, the introduction of contamination into water delivered to customers. This may include defects in design, operation, or maintenance of the source, treatment, storage, or distribution systems.

(81) Stage--In reference to a reverse osmosis or nanofiltration membrane system, a set of pressure vessels installed in parallel.

(82) System--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

(83) Transfer pump--Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(84) Transient, noncommunity water system--A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient, noncommunity water system.

(85) Vessel--In reference to a reverse osmosis or nanofiltration membrane system, a cylindrical housing unit where membrane modules are placed in a series to form one unit.

(86) Wastewater lateral--Any pipe or constructed conveyance carrying wastewater, running laterally down a street, alley, or easement, and receiving flow only from the abutting properties.

(87) Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

(88) Water system--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

§290.39. General Provisions.

(a) Authority for requirements. Texas Health and Safety Code (THSC), Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulation and control of public drinking water systems in the state. The statute requires that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems not exempted by THSC, §341.035(d). The statute also requires the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. Texas Water Code (TWC), §13.1395, prescribes the duties of the commission relating to standards for emergency operations of affected utilities. The statute requires that the commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster.

(b) Reason for this subchapter and minimum criteria. This subchapter has been adopted to ensure regionalization and area-wide options are fully considered, the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical, and operating practices must be specified to ensure that facilities are properly operated to produce and distribute safe, potable water.

(c) Required actions and approvals prior to construction. A person may not begin construction of a public drinking water supply system unless the executive director determines the following requirements have been satisfied and approves construction of the proposed system.

(1) A person proposing to install a public drinking water system within the extraterritorial jurisdiction of a municipality; or within 1/2-mile of the corporate boundaries of a district, or other political subdivision providing the same service; or within 1/2-mile of a certificated service area boundary of any other water service provider shall provide to the executive director evidence that:

(A) written application for service was made to that provider; and

(B) all application requirements of the service provider were satisfied, including the payment of related fees.

(2) A person may submit a request for an exception to the requirements of paragraph (1) of this subsection if the application fees will create a hardship on the person. The request must be accompanied by evidence documenting the financial hardship.

(3) A person who is not required to complete the steps in paragraph (1) of this subsection, or who completes the steps in paragraph (1) of this subsection and is denied service or determines that the existing provider's cost estimate is not feasible for the development to be served, shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.

(4) Emergency Preparedness Plan for Public Water Systems that are Affected Utilities.

(A) Each public water system that is also an affected utility, as defined by §290.38 of this title (relating to Definitions), is required to submit to the executive director, receive approval for, and adopt an emergency preparedness plan in accordance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) using either the template in Appendix G of §290.47 of this title (relating to Appendices) or another emergency preparedness plan that meets the requirements of this section. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(B) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under subparagraph (A) of this paragraph provision for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(C) The executive director shall review an emergency preparedness plan submitted under subparagraph (A) of this paragraph. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(D) Each affected utility shall install any required equipment to implement the emergency preparedness plan approved by the executive director immediately upon operation.

(E) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical

information as requested by the executive director to demonstrate the financial burden.

(d) Submission of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed professional engineer. All engineering documents must have engineering seals, signatures, and dates affixed in accordance with the rules of the Texas Board of Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's public drinking water program furnishes consultation services as a reviewing body only, and its licensed professional engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by this subchapter will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the executive director in writing upon completion of all work. Planning materials shall be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 159, P.O. Box 13087, Austin, Texas 78711-3087.

(e) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) The location of all abandoned or inactive wells within 1/4-mile of a proposed well site shall be shown or reported.

(C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the executive director may give limited approval. In such a case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided to the owner and shall also specify those conditions under which the bond will be forfeited. Such a bond will be transferable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) A copy of each fully executed sanitary control easement and any other documentation demonstrating compliance with §290.41(c)(1)(F) of this title (relating to Water Sources) shall be provided to the executive director prior to placing the well into service. Each original easement document, if obtained, must be recorded in the deed records at the county courthouse. For an example, see commission Form 20698.

(5) Construction features and siting of all facilities for new water systems and for major improvements to existing water systems must be in conformity with applicable commission rules.

(6) For public water systems using reverse osmosis or nanofiltration membranes, the engineering report must include the requirements specified in paragraph (1)(A) - (H) of this subsection, and additionally must provide sufficient information to ensure effective treatment. Specifically:

(A) Provide a clear identification of the proposed raw water source.

(i) If the well has been constructed, a copy of the State of Texas Well Report according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), a cementing certificate (as required by §290.41(c)(3)(A) of this title), and a copy of the complete physical and chemical analysis of the raw water from the well as required by §290.41(c)(3)(G) of this title; or

(ii) If the well has not been constructed, the approximate longitude and latitude for the new well and the projected water quality.

(B) Provide a description of the pretreatment process that includes:

(i) target water quality of the proposed pretreatment process;

(ii) constituent(s) to be removed or treated;

(iii) method(s) or technologies used; and

(iv) operating parameters, such as chemical dosages, filter loading rates, and empty bed contact times.

(C) The design of a reverse osmosis or nanofiltration membrane system shall be based on the standard modeling tools of the manufacturer. The model must be run for both new membranes and end-of-life membranes. All design parameters required by the mem-

brane manufacturer's modeling tool must be included in the modeled analysis. At a minimum, the model shall provide:

(i) system flow rate;

(ii) system recovery;

(iii) number of stages;

(iv) number of passes;

(v) feed pressure;

(vi) system configuration with the number of vessels per stage, the number of passes (if applicable), and the number of elements per vessel;

(vii) flux (in gallons per square foot per day) for the overall system;

(viii) selected fouling factor for new and end-of-life membranes; and

(ix) ion concentrations in the feed water for all constituents required by the manufacturer's model and the projected ion concentrations for the permeate water and concentrate water.

(D) In lieu of the modeling requirements as detailed in subparagraph (C) of this paragraph, the licensed professional engineer may provide either a pilot study or similar full-scale data in accordance with §290.42(g) of this title (relating to Water Treatment). Alternatively, for reverse osmosis or nanofiltration units rated for flow rates less than 300 gallons per minute, the design specifications can be based on the allowable operating parameters of the manufacturer.

(E) Provide documentation that the components and chemicals for the proposed treatment process conform to American National Standards Institute/NSF International (ANSI/NSF) Standard 60 for Drinking Water Treatment Chemicals and ANSI/NSF Standard 61 for Drinking Water System Components.

(F) Provide the details for post-treatment and re-mineralization to reduce the corrosion potential of the finished water. If carbon dioxide and/or hydrogen sulfide is present in the reverse osmosis permeate, include the details for a degasifier for post-treatment.

(G) For compliance with applicable drinking water quality requirements in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), provide the projected water quality at the entry point to the distribution system and the method(s) used to make the water quality projections.

(H) When blending is proposed, provide the blending ratio, source of the water to be blended, and the calculations showing the concentrations of regulated constituents in the finished water.

(I) Provide a description of the disinfection byproduct formation potential based on total organic carbon and other precursor sample results.

(J) Provide the process control details to ensure the integrity of the membrane system. The engineering report shall identify specific parameters and set points that indicate when membrane cleaning, replacement, and/or inspection is necessary.

(i) The parameters shall be based on one, or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(ii) Define the allowable change from baseline performance.

(7) Before reverse osmosis or nanofiltration membrane systems can be used to produce drinking water, but after the reverse osmosis or nanofiltration membrane system has been constructed at the water system, the licensed professional engineer must submit an addendum to the engineering report required by paragraph (6) of this subsection to the executive director for review and approval. The addendum shall include the following verification data of the full-scale treatment process:

(A) Provide the initial baseline performance of the plant. The baseline net driving pressure, normalized permeate flow, and salt rejection (or salt passage) must be documented when the reverse osmosis or nanofiltration membrane systems are placed online.

(B) Provide the frequency of cleaning or membrane replacement. The frequency must be based on a set time interval or at a set point relative to baseline performance of the unit(s).

(C) If modeling is used as the basis for the design, provide verification of the model's accuracy. If the baseline performance evaluation shows that the modeling projection in the engineering report were inaccurate, the licensed professional engineer shall determine if the deviation from the modeled projections resulted from incorrect water quality assumptions or from other incorrect data in the model. The model shall be considered inaccurate if the overall salt passage or the required feed pressure is 10% greater than the model projection. For any inaccurate model, provide a corrected model with the addendum to the engineering report.

(D) Provide verification of plant capacity. The capacity of the reverse osmosis and nanofiltration membrane facility shall be based on the as-built configuration of the system and the design parameters in the engineering report with adjustments as indicated by the baseline performance. Refer to paragraph (6)(C) of this subsection and §290.45(a)(6) of this title for specific considerations.

(E) Provide a complete physical and chemical analysis of the water. The analyses shall be in accordance with §290.41(c)(3)(G) of this title for the raw water (before any treatment), the water produced from the membrane systems, and the water after any post-treatment. Samples must be submitted to an accredited laboratory for chemical analyses.

(8) The calculations for sizing feed pump(s) and chemical storage tank(s) must be submitted to demonstrate that a project meets chemical feed and storage capacity requirements.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director may order the prospective owner or operator to demonstrate financial assurance to operate the system in accordance with applicable laws and rules as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems [~~and Utilities~~]), or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at a minimum, the following elements:

(1) description of areas and population to be served by the potential system;

(2) description of drinking water supply systems within a two-mile radius of the proposed system, copies of written requests

seeking to obtain service from each of those drinking water supply systems, and copies of the responses to the written requests;

(3) time line for construction of the system and commencement of operations;

(4) identification of and costs of alternative sources of supply;

(5) selection of the alternative to be used and the basis for that selection;

(6) identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) an operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) for retail public utilities as defined by TWC, §13.002:

(A) projected rate revenue from residential, commercial, and industrial customers; and

(B) pro forma income, expense, and cash flow statements;

(11) identification of any appropriate financial assurance, including those being offered to capital providers;

(12) a notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information; and

(13) other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) Business plans not required. A person is not required to file a business plan if the person:

(1) is a county;

(2) is a retail public utility as defined by TWC, §13.002, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; [~~or~~]

(4) is a Class A utility, as defined by TWC, §13.002, that has applied for or been granted an amendment of a certificate of convenience and necessity under TWC, §13.258, for the area in which the construction of the public drinking water supply system will operate; or

(5) [~~(4)~~] is a noncommunity nontransient water system and the person has demonstrated financial assurance under THSC, Chapter 361 or Chapter 382 or TWC, Chapter 26.

(h) Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) The executive director shall be notified in writing by the design engineer or the owner before construction is started.

(3) Upon completion of the water works project, the engineer or owner shall notify the executive director in writing as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) Changes in previously approved plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units, and storage tanks, shall be submitted to the executive director for review and approval.

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Significant changes in existing systems or supplies shall not be instituted without the prior approval of the executive director.

(1) Public water systems shall submit plans and specifications to the executive director for the following significant changes:

(A) proposed changes to existing systems which result in an increase or decrease in production, treatment, storage, or pressure maintenance capacity;

(B) proposed changes to the disinfection process used at plants that treat surface water or groundwater that is under the direct influence of surface water including changes involving the disinfectants used, the disinfectant application points, or the disinfectant monitoring points;

(C) proposed changes to the type of disinfectant used to maintain a disinfectant residual in the distribution system;

(D) proposed changes in existing distribution systems when the change is greater than 10% of the number of connections, results in the water system's inability to comply with any of the applicable capacity requirements of §290.45 of this title, or involves interconnection with another public water system; and

(E) any other material changes specified by the executive director.

(2) Public water systems shall notify the executive director in writing of the addition of treatment chemicals, including long-term treatment changes, that will impact the corrosivity of the water. These are considered to be significant changes that require written approval from the executive director.

(A) Examples of long-term treatment changes that could impact the corrosivity of the water include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants, and switching corrosion inhibitor products. Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(B) After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the water system

shall submit plans and specifications in accordance with the requirements of subsection (d) of this section.

(3) Plans and specifications may not be required for changes that are specifically addressed in paragraph (1)(D) of this subsection in the following situations:

(A) Unless plans and specifications are required by Chapter 293 of this title (relating to Water Districts), the executive director will not require another state agency or a political subdivision to submit planning material on distribution line improvements if the entity has its own internal review staff and complies with all of the following criteria:

(i) the internal review staff includes one or more licensed professional engineers that are employed by the political subdivision and must be separate from, and not subject to the review or supervision of, the engineering staff or firm charged with the design of the distribution extension under review;

(ii) a licensed professional engineer on the internal review staff determines and certifies in writing that the proposed distribution system changes comply with the requirements of §290.44 of this title (relating to Water Distribution) and will not result in a violation of any provision of §290.45 of this title;

(iii) the state agency or political subdivision includes a copy of the written certification described in this subparagraph with the initial notice that is submitted to the executive director.

(B) Unless plans and specifications are required by Chapter 293 of this title, the executive director will not require planning material on distribution line improvements from any public water system that is required to submit planning material to another state agency or political subdivision that complies with the requirements of subparagraph (A) of this paragraph. The notice to the executive director must include a statement that a state statute or local ordinance requires the planning materials to be submitted to the other state agency or political subdivision and a copy of the written certification that is required in subparagraph (A) of this paragraph.

(4) Public water systems shall notify the executive director in writing of proposed replacement or change of membrane modules, which may be a significant change. After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section. In its notification to the executive director, the system shall include the following information:

(A) The membrane module make/type, model, and manufacturer;

(B) The membrane plant's water source (groundwater, surface water, groundwater under the direct influence of surface water, or other);

(C) Whether the membrane modules are used for pathogen treatment or not;

(D) Total number of membrane modules per membrane unit; and

(E) The number of membrane modules being replaced or changed for each membrane unit.

(k) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of this subchapter will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) Exceptions. Requests for exceptions to one or more of the requirements in this subchapter shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception shall precede the submission of engineering plans and specifications for a proposed project for which an exception is being requested.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(4) The executive director may establish site-specific requirements for systems that have been granted an exception. The requirements may include, but are not limited to: site-specific design, operation, maintenance, and reporting requirements.

(5) Water systems that are granted an exception shall comply with the requirements established by the executive director under paragraph (4) of this subsection.

(m) Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title.

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by THSC, §341.035, that has a history of noncompliance with THSC, Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section;

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director.

(A) The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director.

(B) The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title and will be as specified by the executive director.

(C) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in Chapter 37, Subchapter O of this title and released only with the approval of the executive director.

(o) Emergency Preparedness Plans for Affected Utilities.

(1) Each public water system that is also an affected utility and that exists as of November 1, 2011 is required to adopt and submit to the executive director an emergency preparedness plan in accordance with §290.45 of this title and using the template in Appendix G of §290.47 of this title or another emergency preparedness plan that meets the requirements of this subchapter no later than February 1, 2012. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under this subsection provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(3) The executive director shall review an emergency preparedness plan submitted under this subsection. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with the commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(4) Not later than June 1, 2012, each affected utility shall implement the emergency preparedness plan approved by the executive director.

(5) An affected utility may file with the executive director a written request for an extension not to exceed 90 days, of the date by which the affected utility is required under this subsection to submit the affected utility's emergency preparedness plan or of the date by which the affected utility is required under this subsection to implement the affected utility's emergency preparedness plan. The executive director may approve the requested extension for good cause shown.

(6) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

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

Filed with the Office of the Secretary of State on June 29, 2018.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§291.1, 291.3, 291.14, 291.76, 291.92, 291.103, 291.110, 291.114, 291.128, 291.131, 291.142, and 291.143; proposes the repeal of §§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12, 291.21 - 291.32, 291.34, 291.35, 291.41 - 291.45, 291.71 - 291.75, 291.80 - 291.91, 291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113, 291.115 - 291.125, 291.127, 291.129, 291.130, 291.132 - 291.138, 291.141, 291.146, 291.147, and 291.150 - 291.153; and proposes new §291.129 and §291.130.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is proposed to implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013; and HB 294, 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities.

HB 294 adds additional criteria to Texas Water Code (TWC), §13.412(a) that will allow the commission to request the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or Texas Health and Safety Code (THSC), Chapter 341.

The proposed amendment to §291.76 would facilitate the ability to convert the regulatory assessment fee (RAF) to an efficient, on-line reporting, invoicing, and payment structure within the confines of the commission's existing SUNSS, Basis2, and ePay applications. This conversion from a self-report, self-pay to a billed fee allows for the collection of delinquent fees, late fees, and penalty fees as directed by 30 TAC Chapter 12, Payment of Fees.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections, paragraphs, or subparagraphs are proposed for removal, subsequent subsections, paragraphs, or subparagraphs are re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

Subchapter A: General Provisions

§291.1, Purpose and Scope of This Chapter

The commission proposes to amend §291.1 to remove all reference to rates and consumer protection and clarify that Chapter 291 applies to commission proceedings under TWC, §§11.036 - 11.041 and Chapter 13.

§291.2, Severability Clause

The commission proposes the repeal of §291.2 to conform with current commission's rule writing practices.

§291.3, Definitions of Terms

The commission proposes to amend §291.3 to remove all paragraphs, with the exception of §291.3(2), (5), (10), (13) - (15), (23), (28), (29), (32), (34) - (36), (40), (42), (43), (52), (53), and (55). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also proposes to amend renumbered §291.3(3) to add "Public Utility Commission of Texas" to the definition of "Certificate of Convenience and Necessity" to clarify that the PUC is the agency that grants certificates of convenience and necessity.

§291.4, Cooperative Corporation Rebates

The commission proposes the repeal of §291.4. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.5, Submission of Documents

The commission proposes the repeal of §291.5. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.6, Signatories of Applications

The commission proposes the repeal of §291.6. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.8, Administrative Completeness

The commission proposes the repeal of §291.8. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.9, Agreements To Be in Writing

The commission proposes the repeal of §291.9 to conform with current commission's rule writing practices.

§291.11, Informal Proceedings

The commission proposes the repeal of §291.11. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.12, Burden of Proof

The commission proposes the repeal of §291.12. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.14, Emergency Orders

The commission proposes to amend §291.14 to remove all language, with the exception of §291.14(b), (b)(1), and (c). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also proposes to combine existing §291.14(b) and (b)(1) to form one sentence in proposed §291.14(a).

Subchapter B: Rates, Rate-Making, And Rates/Tariff Changes

The commission proposes the repeal of Subchapter B, §§291.21 - 291.32, 291.34, 291.35. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Subchapter C: Rate-Making Appeals

The commission proposes the repeal of Subchapter C, §§291.41 - 291.45. The language in existing §291.44 is proposed as new §291.130 with the removal of references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600 and SB 567. The purpose of moving the language in §291.44 to Subchapter I is to combine all rules related to petitions for the sale or use of water under one subchapter.

Subchapter D: Records and Reports

§291.71, General Reports

The commission proposes the repeal of §291.71. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.72, Financial Records and Reports--Uniform System of Accounts

The commission proposes the repeal of §291.72. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.73, Water and Sewer Utilities Annual Reports

The commission proposes the repeal of §291.73. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.74, Maintenance and Location of Records

The commission proposes the repeal of §291.74. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.75, Management Audits

The commission proposes the repeal of §291.75. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.76, Regulatory Assessment

The commission proposes to amend §291.76(d) to provide clarification between the amount of RAF payable to the commission versus the amounts payable to the utility service provider by their customers for water and sewer invoices. The RAF rule does not apply to ancillary fees (e.g., late fees, tap fees, reclaimed water, etc.), the clarification in this revision should ensure proper calculation, reporting, and remittance of fees.

The commission proposes to amend §291.76(e) to clarify the payment period as the previous calendar year.

The commission proposes to amend §291.76(h) to clarify that retail water and sewer applies to both charges and the assessment collection.

The commission proposes to amend §290.76(i) to specify the utility service provider must ensure retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's on-line portal.

The commission proposes §291.76(i)(1) to allow the commission to issue an invoice based on previously reported revenues and adjustment based on available information if the utility service provider does not report charges for water and sewer charges to the commission by January 30th of each year.

The commission proposes §291.76(i)(2) to allow the commission to issue an invoice in an amount up to $100 if the utility service provider has not previously reported charges for water and sewer services to the commission.

The commission proposes §291.76(i)(3) to clarify that utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline are not relieved of the requirement to ensure retail water and sewer charges are reported through the on-line portal. Once the utility service provider reports charges for water and sewer services to the commission through the on-line portal, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

The commission proposes to amend §291.76(k) to clarify that assessment shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal.

Subchapter E: Customer Service and Protection

The commission proposes the repeal of Subchapter E, §§291.80 - 291.90. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required. Additionally, the requirements for each utility to maintain a current copy of Chapter 290, Subchapter D and Chapter 291 at each office location is no longer necessary because up-to-date versions of Chapters 290 and 291 are readily available online.

Subchapter F: Quality of Service

§291.91, Applicability

The commission proposes the repeal of §291.91. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.92, Requirements of Service

The commission proposes to amend §291.92 to remove subsection (b), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

Subchapter G: Certificates of Convenience and Necessity

§291.101, Certificate Required

The commission proposes the repeal of §291.101. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.102, Criteria for Considering and Granting Certificates or Amendments

The commission proposes the repeal of §291.102. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.103, Certificates Not Required

The commission proposes to amend §291.103 to remove all language, with the exception of §291.103(d)(1) and (1)(A) - (D). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.104, Applicant

The commission proposes the repeal of §291.104. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.105, Contents of Certificate of Convenience and Necessity Applications

The commission proposes the repeal of §291.105. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.106, Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications

The commission proposes the repeal of §291.106. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.107, Action on Applications

The commission proposes the repeal of §291.107. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.109, Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction

The commission proposes the repeal of §291.109. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.110, Foreclosure and Bankruptcy

The commission proposes to amend §291.110 to remove all language, with the exception of §291.110(a), (c), and (e). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. Additionally, the commission proposes to amend re-lettered §291.110(b) to remove "is not required to provide the 120-day notice prescribed by §13.301 of the code" which also pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.111, Purchase of Voting Stock in Another Utility

The commission proposes the repeal of §291.111. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.112, Transfer of Certificate of Convenience and Necessity

The commission proposes the repeal of §291.112. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.113, Revocation or Amendment of Certificate

The commission proposes the repeal of §291.113. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.114, Requirement To Provide Continuous and Adequate Service

The commission proposes to amend §291.114 to remove all language, with the exception of §291.114(b) and (b)(1) - (3). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The language in §291.114(b)(4) was removed to be consistent with TWC, §13.041. Additionally, the commission proposes to amend existing §291.114(b)(1)(B) to replace "commission" with "Public Utility Commission of Texas" and remove the

requirement that a retail public utility provide financial assurance in accordance with TCEQ's rules in Chapter 37.

§291.115, Cessation of Operations by a Retail Public Utility

The commission proposes the repeal of §291.115. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.116, Exclusiveness of Certificates

The commission proposes the repeal of §291.116. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.117, Contracts Valid and Enforceable

The commission proposes the repeal of §291.117. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.118, Contents of Request for Commission Order under the Texas Water Code, §13.252

The commission proposes the repeal of §291.118. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.119, Filing of Maps

The commission proposes the repeal of §291.119. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.120, Single Certification in Incorporated or Annexed Areas

The commission proposes the repeal of §291.120. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Subchapter H: Utility Submetering and Allocation

The commission proposes the repeal of Subchapter H, §§291.121 - 291.125 and §291.127. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Subchapter I: Wholesale Water or Sewer Services

The commission proposes to amend the title of Subchapter I to "Wholesale Water Petitions" to more closely reflect the subchapter's contents.

§291.128, Petition or Appeal Concerning Wholesale Rate

The commission proposes to amend §291.128(1) to clarify the applicable sections in TWC, Chapter 11 and remove the reference to TWC, Chapter 12. The commission also proposes to remove §291.128(2) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567; and rename the section to more closely reflect the section's purpose.

§291.129, Definitions

The commission proposes the repeal of §291.129. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.129, Petition

The commission proposes new §291.129. The language in new §291.129 is from existing §291.130, with the exception of §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.130, Petition or Appeal

The commission proposes the repeal of §291.130. The language in §291.130 is proposed as new §291.129, with the exception of §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The purpose of moving the language in §291.130 to proposed new §291.129 is so the general language in existing §291.130 comes before the new language in proposed §291.130 pertaining to specific petitions under TWC, §§11.036 - 11.041.

§291.130, Contents of Petition under the Texas Water Code, §§11.036 - 11.041

The commission proposes new §291.130. The language in new §291.130 is from existing §291.44 with the following changes: removed the references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600 and SB 567; changed the reference from ratepayer to person, changed the reference from water supplier to entity, and removed the references to supply service in order to conform to TWC, §§11.036 - 11.041; included language to clarify that the petition includes the applicable requirements depending on which statutory provision is being invoked; and removed redundant language found in proposed new §291.129. The purpose of moving the language from §291.44 to proposed new §291.130 is to combine all rules related to petitions for the sale or use of water under one subchapter. The commission seeks public comments on the proposed rule provisions concerning the commission's review and hearing process for wholesale water petitions filed under TWC, §§11.036 - 11.041.

§291.131, Executive Director's Review of Petition or Appeal

The commission proposes to amend §291.131 by removing all language, with the exception of §291.131(a). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission proposes to remove the reference to appeal and to add language to clarify TCEQ's authority under TWC, §§11.036 - 11.041. The commission also proposes to update the references from §291.130 to proposed new §291.129. The commission seeks public comments on the proposed rule provisions concerning the commission's review and hearing process for wholesale water petitions filed under TWC, §§11.036 - 11.041.

§291.132, Evidentiary Hearing on Public Interest

The commission proposes the repeal of §291.132. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 with the exception of TWC, §11.036 transferred from the commission to the PUC on September 1, 2014.

§291.133, Determination of Public Interest

The commission proposes the repeal of §291.133. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.134, Commission Action to Protect Public Interest, Set Rate

The commission proposes the repeal of §291.134. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The

setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.135, Determination of Cost of Service

The commission proposes the repeal of §291.135. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.136, Burden of Proof

The commission proposes the repeal of §291.136. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.137, Commission Order To Discourage Succession of Rate Disputes

The commission proposes the repeal of §291.137. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.138, Filing of Rate Data

The commission proposes the repeal of §291.138. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

Subchapter J: Enforcement, Supervision, and Receivership

§291.141, Supervision of Certain Utilities

The commission proposes the repeal of §291.141. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.142, *Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver*

The commission proposes §290.142(a)(2)(D) to include additional criteria that would allow the commission or the executive director to request the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or THSC, Chapter 341.

§291.143. Operation of a Utility by a Temporary Manager

The commission proposes to amend §291.143(d) to change the term of the temporary manager from "one year" to "180 days" to be consistent with TWC, §5.505.

§291.146, Municipal Rates for Certain Recreational Vehicle Parks

The commission proposes the repeal of §291.146. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.147, Temporary Rates for Services Provided for a Non-functioning System

The commission proposes the repeal of §291.147. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Subchapter K: Provisions Regarding Municipalities

The commission proposes the repeal of Subchapter K, §§291.150 - 291.153. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Fiscal Note: Cost to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to repeal or modify obsolete rules for a program transferred to the PUC through the passage of HB 1600 and SB 567 (2013). Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The proposed revisions to Chapter 291 will eliminate or modify rules that are no longer applicable to the commission as a result of the transfer of the responsibility to the PUC. Staff, fees, and functions relating to the economic regulation of water and sewer utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015.

In addition, the proposed rulemaking implements statutory changes made by HB 567 (2017). HB 567 allows the commission to request the appointment of a receiver to a water or sewer utility that violates a final judgment issued by a district court.

Finally, the proposed rulemaking includes an efficiency recommendation from the commission to convert the RAF to an on-line billing system and clarify provisions which have historically caused confusion for the regulated entities.

For the purpose of this fiscal note, it is assumed that all retail public utilities, which include investor-owned utilities, counties, water supply and wastewater service corporation, and districts, have computer and internet access. In the unlikely circumstance that they do not, the commission determined that there may be a minimal cost to the retail public utility to obtain access to the agency's on-line billing system.

Public Benefits and Cost

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law, clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity, and a more efficient system of collecting fees from retail public utilities.

There are no anticipated fiscal implications as a result of amending or repealing obsolete rules for the regulation of water and wastewater rates, services, and certificates of convenience and necessity because these functions have already been transferred to the PUC.

The amendments to Chapter 291 also implement an efficiency recommendation from the commission to convert the RAF to an on-line billing system and clarifies the language to avoid confusion by the regulated parties.

For the purpose of this fiscal note, it is assumed that all retail public utilities, which include investor-owned utilities, counties, water supply and sewer service corporation, and districts, have

computer and internet access. In the unlikely circumstance that they do not, the commission determined that there may be a minimal cost to the retail public utility to obtain access to the agency's on-line billing system.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rules would apply statewide and have the same effect in rural communities as in urban communities.

Small and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect.

In the unlikely circumstance that a retail public utility does not have computer and internet access, the commission determined that there may be a minimal cost to the entity.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does expand an existing regulation by adding additional criteria that will allow the commission to request the attorney general appoint a receiver to a water or wastewater utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13, or THSC, Chapter 341. The proposed rulemaking also repeals obsolete rules for a program transferred to the PUC. The proposed rulemaking also converts the RAF from a self-report, self-pay fee to a billed fee. The proposed rulemaking may alter the number of individuals affected by the addition of the criteria that will allow the commission to request the appointment of a receiver to a water or wastewater utility. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB 1600 and SB 567 (2013), transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The intent of the proposed rulemaking associated with HB 1600 and SB 567 is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities. HB 294 (2017) adds additional criteria to TWC, §13.412(a) that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341. The intent of the proposed rulemaking associated with HB 294 is to incorporate the additional criteria listed in TWC, §13.142(a) into §291.142. The intent of the proposed changes to §291.76 is to convert the RAF from a self-report, self-pay fee to a billed fee. The conversion from a self-report, self-pay fee to a billed fee will allow for the collection of delinquent fees, late fees, and penalty fees as directed by Chapter 12. The intent of these rules is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend and repeal the rules relating to economic regulation of water and wastewater utilities; incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any

express requirements of TWC, Chapter 5, 11, 12, or 13, which relate to the collection of fees, economic regulation of water and wastewater utilities, and the appointment of a receiver for water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes these rules for the following purposes: 1) to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; 2) to incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) the conversion of the RAF from a self-report, self-pay fee to a billed fee.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5) provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this portion of the proposed rulemaking.

Further, the commission determined that amending and repealing obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities; incorporating additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The specific intent of the proposed rulemaking is to: 1) transfer functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567; 2) incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) to convert the RAF from a self-report, self-pay fee to a billed fee. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html* . For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§291.1, 291.3, 291.14

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.1. Purpose and Scope of This Chapter.

This chapter is intended to govern the procedure for the institution, conduct and determination of commission proceedings under Texas Water Code (TWC), §§11.036 - 11.041 and Chapter 13. This chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. [establish a comprehensive regulatory system under Texas Water Code Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.]

§291.3. Definitions of Terms.

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

[(1) Acquisition adjustment--]

[(A) The difference between:]

(i) the lesser of the purchase price paid by an acquiring utility or the current depreciated replacement cost of the plant, property, and equipment comparable in size, quantity, and quality to that being acquired, excluding customer contributed property; and]

(ii) the original cost of the plant, property, and equipment being acquired, excluding customer contributed property, less accumulated depreciation.]

[(B) A positive acquisition adjustment results when subparagraph (A)(i) of this paragraph is greater than subparagraph (A)(ii) of this paragraph.]

[(C) A negative acquisition adjustment results when subparagraph (A)(ii) of this paragraph is greater than subparagraph (A)(i) of this paragraph.]

(1) [(2)] Affected county--A county to which Texas Local Government Code, Chapter 232, Subchapter B, applies.

[(3) Affected person--Any landowner within an area for which an application for a new or amended certificate of public convenience and necessity is filed; any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.]

[(4) Affiliated interest or affiliate--]

[(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;]

[(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;]

[(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;]

[(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;]

[(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;]

[(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or]

[(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.]

(2) [(5)] Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation Commission, and institutions for higher education) which makes rules or determines contested cases.

[(6) Allocations--For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.]

[(7) Base rate--The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service, excluding stand-by fees, which does not vary due to changes in utility service consumption patterns.]

[(8) Billing period--The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.]

[(9) Certificate--The definition of certificate is that definition given to certificate of convenience and necessity in this subchapter.]

(3) [(10)] Certificate of Convenience and Necessity--A permit issued by the Public Utility Commission of Texas [commission] which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area.

[(11) Certificate of Public Convenience and Necessity--The definition of certificate of public convenience and necessity

is that definition given to certificate of convenience and necessity in this subchapter.]

[(12) Class of service or customer class--A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.]

(4) [(13)] Code--The Texas Water Code.

(5) [(14)] Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

(6) [(15)] Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

[(16) Customer service line or pipe--The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.]

[(17) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.]

[(18) Incident of tenancy--Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.]

[(19) Landowner--An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.]

[(20) License--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.]

[(21) Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission in accordance with its authority under the Texas Water Code.]

[(22) Main--A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.]

(7) [(23)] Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

[(24) Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.]

[(25) Membership fee--A fee assessed each water supply or sewer service corporation service applicant that entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed under said bylaws. For purposes of Texas Water Code, §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.]

[(26) Municipality--A city, existing, created, or organized under the general, home rule, or special laws of this state.]

[(27) Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.]

(8) [(28)] Nonfunctioning system--A retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §291.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §291.143 of this title (relating to Operation of a Utility by a Temporary Manager).

(9) [(29)] Person--Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

[(30) Physician--Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.]

[(31) Point of use or point of ultimate use--The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.]

(10) [(32)] Potable water--Water that is used for or intended to be used for human consumption or household use.

[(33) Premises--A tract of land or real estate including buildings and other appurtenances thereon.]

(11) [(34)] Public utility--The definition of public utility is that definition given to "Water [water] and sewer utility" in this section [subchapter].

(12) [(35)] Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(13) [(36)] Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

[(37) Rate--Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in Texas Water Code, §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.]

[(38) Ratepayer--Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills

received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.]

[(39) Reconnect fee--A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §291.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.]

(14) [(40)] Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

[(41) Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.]

(15) [(42)] Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in Texas Water Code, §15.602.

(16) [(43)] Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the Texas Water Code to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

[(44) Service line or pipe--A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.]

[(45) Sewage--Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.]

[(46) Standby fee--A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.]

[(47) Tap fee--A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.]

[(48) Tariff--The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.]

[(49) Temporary water rate provision--A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.]

[(50) Test year--The most recent 12-month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.]

[(51) Utility--The definition of utility is that definition given to water and sewer utility in this subchapter.]

(17) [(52)] Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(18) [(53)] Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the system due to emergency conditions or drought.

[(54) Water supply or sewer service corporation--Any nonprofit corporation organized and operating under Texas Water Code, Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.]

[(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.]

[(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.]

[(C) A majority of the directors and officers of the corporation must be members of the corporation.]

[(D) The corporation's by-laws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.]

(19) [(55)] Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§291.14. Emergency Orders.

[(a) The commission may issue emergency orders, with or without a hearing.]

[(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;]

[(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; and/or]

[(3) to establish reasonable compensation for the temporary service required under paragraph (2) of this subsection and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.]

(a) [(b)] The commission or executive director may also issue orders under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions)[:]

[(1)] to appoint a temporary manager under Texas Water Code, §5.507 and §13.4132. [; and/or]

[(2) to approve an emergency rate increase under Texas Water Code, §5.508 and §13.4133.]

(b) [(c)] If an order is issued under this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

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

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30 TAC §§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.2. Severability Clause.
§291.4. Cooperative Corporation Rebates.
§291.5. Submission of Documents.
§291.6. Signatories to Applications.
§291.8. Administrative Completeness.
§291.9. Agreements To Be in Writing.
§291.11. Informal Proceedings.
§291.12. Burden of Proof.

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SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

30 TAC §§291.21 - 291.32, 291.34, 291.35

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.21. Form and Filing of Tariffs.
§291.22. Notice of Intent to Change Rates.
§291.23. Time between Filings.
§291.24. Jurisdiction over Affiliated Interests.
§291.25. Rate Change Applications, Testimony and Exhibits.
§291.26. Suspension of Rates.
§291.27. Request for a Review of a Rate Change by Ratepayers Pursuant to the Texas Water Code, §13.187(b).
§291.28. Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b).
§291.29. Interim Rates.
§291.30. Escrow of Proceeds Received under Rate Increase.
§291.31. Cost of Service.
§291.32. Rate Design.
§291.34. Alternative Rate Methods.
§291.35. Jurisdiction of Commission over Certain Water or Sewer Supply Corporations.

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

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SUBCHAPTER C. RATE-MAKING APPEALS

30 TAC §§291.41 - 291.45

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.41. Appeal of Rate-making Pursuant to the Texas Water Code, §13.043.

§291.42. Contents of Petition Seeking Review of Rates Pursuant to the Texas Water Code, §13.043(b).

§291.43. Refunds during Pendency of Appeal.

§291.44. Contents of Pleadings Seeking Review of Rates for Sales of Water under the Texas Water Code, §§11.036-11.041 and 12.013.

§291.45. Rates Charged by a Municipality to a District.

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

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SUBCHAPTER D. RECORDS AND REPORTS

30 TAC §§291.71 - 291.75

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.71. General Reports.

§291.72. Financial Records and Reports--Uniform System of Accounts.

§291.73. Water and Sewer Utilities Annual Reports.

§291.74. Maintenance and Location of Records.

§291.75. Management Audits.

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30 TAC §291.76

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.701, concerning Fees, which the commission is authorized to collect.

The proposed amendment implements TWC, §§5.102, 5.103, and 5.701.

§291.76. Regulatory Assessment.

(a) For the purpose of this section, utility service provider means a public utility, water supply or sewer service corporation as defined in Texas [~~the~~] Water Code (TWC), §13.002, or a district as defined in TWC [~~the Water Code~~], §49.001.

(b) Except as otherwise provided, a utility service provider which provides potable water or sewer utility service shall collect a regulatory assessment from each retail customer and remit such fee to the commission under the provisions of this section.

(c) A utility service provider is prohibited from collecting a regulatory assessment from the state or a state agency or institution.

(d) The regulatory assessment amount [~~Amounts~~] payable to the commission shall be based on the following:

(1) for a public utility as defined in TWC [~~the Water Code~~], §13.002, 1.0% of the charge for retail water and sewer service;

(2) for a water supply or sewer service corporation as defined in TWC [~~the Water Code~~], §13.002, 0.5% of the charge for retail water and sewer service;

(3) for a district as defined in TWC [~~the Water Code~~], §49.001, 0.5% of the charge for retail water and sewer service.

(e) The amount payable to the commission shall be based on the amounts actually collected by the utility service provider during the previous calendar year [~~payment period~~].

(f) The amount payable shall be based on water and sewer service charges to retail customers only, and shall not be based on:

(1) associated delinquent, penalty, or interest charges;

(2) tap fees, standby fees, impact fees, extension fees, capital improvement surcharges, itemized solid waste collection fees, or other unrelated charges; or

(3) wholesale charges from one utility service provider to another.

(g) The utility service provider may include the assessment as a separate line item on a customer's bill or include it in the retail charge.

(h) The utility service provider shall be responsible for keeping proper records of the annual retail water and sewer charges and assessment collections [~~for retail water and sewer service~~] and provide such records to the commission upon request.

(i) By January 30th of each year, the utility service provider must ensure the retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's designated format. [~~The full amount payable for the 12 calendar months of each year must be remitted to the commission by January 30th of the following year.~~]

(1) If the utility service provider does not report charges for water and sewer services to the commission by January 30th of each year, the commission may issue an invoice based on previously reported revenues and adjustment based on available information.

(2) If the utility service provider has not previously reported charges for water and sewer services to the commission, the commission may issue an invoice in an amount up to $100.

(3) Utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline, and who pay an invoice generated by paragraph (1) or (2) of this subsection, are not relieved of the requirement to ensure retail water and sewer charges are reported through the designated format. Once the utility service provider reports charges for water and sewer services to the commission through the designated format, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

(j) The utility service provider shall pursue collection of the assessment from the customer in the same manner and with the same diligence that it pursues collection of other service charges.

(k) Assessments [~~If assessments~~] collected in the 12 months prior to January 1st [~~1~~] of each year shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. If assessments are not received by the invoice due date, penalties and interest for the late payment of fees shall be assessed [~~are not received by the commission by January 30th of that year, the utility service provider shall be assessed penalties and interest~~] in accordance with Chapter 12 of this title (relating to Payment of Fees).

(l) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(m) A utility service provider is exempt from the provisions of this section if the [~~such~~] provider:

(1) does not own and has no responsibility for operation and maintenance of the facilities necessary in providing water and sewer utility service, including distribution and collection systems;

(2) does not maintain a security interest in the facilities necessary in providing water and sewer utility service;

(3) has no authority to set the retail customer's rates; and

(4) does not make policy decisions regarding water and sewer services.

(n) If it appears that utility service provider has violated this section, the commission may request a civil suit to be brought in a court of competent jurisdiction for injunctive or other appropriate relief.

(1) At the request of the commission, the attorney general shall bring and conduct the suit in the name of the state.

(2) The suit may be brought in Travis County or in the county in which the defendant resides.

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SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

30 TAC §§291.80 - 291.90

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.80. Applicability.
§291.81. Customer Relations.
§291.82. Resolution of Disputes.
§291.83. Refusal of Service.
§291.84. Applicant and Customer Deposit.
§291.85. Response to Requests for Service by a Retail Public Utility Within Its Certificated Area.
§291.86. Service Connections.
§291.87. Billing.
§291.88. Discontinuance of Service.
§291.89. Meters.
§291.90. Continuity of Service.

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SUBCHAPTER F. QUALITY OF SERVICE

30 TAC §291.91

Statutory Authority

The repeal of the section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the section implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.91. Applicability.

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30 TAC §291.92

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendment implements House Bill 1600 and Senate Bill 567, passed by the 83rd Texas Legislature, 2013.

§291.92. Requirements by Others.

[~~(a)~~] The application of commission rules shall not relieve the retail public utility from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

[~~(b) The commission's rules in this chapter relating to rates, records and reporting, customer service and protection and quality of service shall apply to utilities operating within the corporate limits of a municipality exercising original rate jurisdiction, unless the municipality adopts its own rules.~~]

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

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SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

30 TAC §§291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113, 291.115 - 291.120

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.101. Certificate Required.

§291.102. Criteria for Considering and Granting Certificates or Amendments.

§291.104. Applicant.

§291.105. Contents of Certificate of Convenience and Necessity Applications.

§291.106. Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications.

§291.107. Action on Applications.

§291.109. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.

§291.111. Purchase of Voting Stock in Another Utility.

§291.112. Transfer of Certificate of Convenience and Necessity.

§291.113. Revocation or Amendment of Certificate.

§291.115. Cessation of Operations by a Retail Public Utility.

§291.116. Exclusiveness of Certificates.

§291.117. Contracts Valid and Enforceable.

§291.118. Contents of Request for Commission Order under the Texas Water Code, §13.252.

§291.119. Filing of Maps.

§291.120. Single Certification in Incorporated or Annexed Areas.

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30 TAC §§291.103, 291.110, 291.114

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the

TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.103. Certificates Not Required.

[(a) Extension of Service.]

[(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of public convenience and necessity, a retail public utility is not required to secure a certificate of public convenience and necessity for:]

[(A) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or]

[(B) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.]

[(2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the certificated area clearly showing the extension, accompanied by a written explanation of the extension.]

[(b) Construction of Facilities. A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.]

[(c) Municipality Pursuant to the Texas Water Code, §13.255. A municipality which has given notice under the Texas Water Code, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:]

[(1) a copy of the notice required pursuant to the Texas Water Code, §13.255; and]

[(2) a map showing the area affected under the Texas Water Code, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.]

[(d) Utility or Water Supply Corporation With Less Than 15 Potential Connections.]

[(1)] A utility or water supply corporation is exempt from the requirement to possess a certificate of convenience and necessity in order to provide retail water service if it:

(1) [(A)] has less than 15 potential service connections;

(2) [(B)] is not owned by or affiliated with a retail public utility or any other provider of potable water service;

(3) [(C)] is not within the certificated area of another retail public utility; and

(4) [(D)] is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.

[(2) Utilities or water supply corporations with less than 15 potential connections currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.]

[(3) The executive director may revoke the current certificate of convenience and necessity upon written request by the exempt utility or water supply corporation.]

[(4) An exempted utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the executive director which shall not be more stringent than those in §§291.80-291.90 of this title.]

[(5) The exempted utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.]

[(6) Exempt Utility Tariff and Rate Change Requirements. An exempted utility operating with or without a certificate of convenience and necessity:]

[(A) must maintain a current copy of the exempt utility tariff form with its current rates at its business location; and]

[(B) may change its rates without following the requirements in §291.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of rate changes prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written protests may be submitted to the commission at that address. If the commission receives written protests to a proposed rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the executive director will review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments from customers or the exempt utility, the executive director will establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the executive director. The exempt utility shall refund any rates collected in excess of the rates established by the executive director in accordance with the time frames or other requirements established by the executive director.]

[(C) The exempt utility or water supply corporation, public interest counsel, or any affected customer may file a written request for reconsideration or protest of the executive director's decision on rates with the chief clerk not later than the 20th day after the date on which the executive director mailed his decision to the exempt utility and customers. The rates determined by the executive director shall remain in effect while the commission considers the request or protest. If the request or protest is not acted on by the commission within 45 days after the date on which the executive director mailed his decision on rates to the exempt provider and customers, the request shall be deemed to be overruled.]

[(D) A rate change application filed by an exempt utility that follows the rate change procedures in §291.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.]

[(7) Unless authorized in writing by the executive director, a utility or a water supply corporation operating under these requirements may not cease utility operations. A utility may not discontinue service to a customer with or without notice except in accordance with the Exempt Utility Tariff Form and a water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.]

[(8) A utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff specified by the executive director shall be subject to any and all enforcement remedies provided by this chapter and the Texas Water Code, Chapter 13.]

[(e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under Texas Water Code, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by Texas Water Code, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by Texas Water Code, §13.255(b).]

§291.110. Foreclosure and Bankruptcy.

(a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the commission in writing of that fact not later than the tenth day after the date on which the utility receives the notice.

[(b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing utility service unless the person has a completed application for a certificate of convenience and necessity or to transfer the current certificate of convenience and necessity on file with the commission within 30 days after the foreclosure is completed.]

(b) [(c)] A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service [is not required to provide the 120-day notice prescribed by §13.301 of the code, but] shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

[(d) The financial institution may operate the utility for an interim period not to exceed 12 months before transferring or otherwise obtaining a certificate of convenience and necessity unless the executive director in writing extends the time period. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.]

(c) [(e)] Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the commission in writing.

§291.114. Requirement To Provide Continuous and Adequate Service.

[(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:]

[(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;]

[(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;]

[(3) nonuse; or]

[(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.]

[(b)] After notice and hearing, the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Texas Water Code, §16.341, to:

(A) provide specified improvements in its service in a defined area if:

(i) service in that area is inadequate as set forth in §291.93 and §291.94 of this title (relating to Adequacy of Water Utility Service; and Adequacy of Sewer Service); or

(ii) is substantially inferior to service in a comparable area; and

(iii) it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the Public Utility Commission of Texas [commission] to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules [as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities), or as specified by the commission];

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service; or

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider. [; or]

[(4) issue an emergency order, with or without a hearing, under §291.14 of this title (relating to Emergency Orders).]

[(c) If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable

a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Health and Safety Code, §341.0355, or under this chapter, the commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a commission meeting, may:]

[(1) immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the financial assurance in an amount determined by the commission not to exceed the amount of the financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting; and]

[(2) require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.]

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

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SUBCHAPTER H. UTILITY SUBMETERING AND ALLOCATION

30 TAC §§291.121 - 291.125, 291.127

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.121. General Rules and Definitions.
§291.122. Owner Registration and Records.
§291.123. Rental Agreement.
§291.124. Charges and Calculations.
§291.125. Billing.
§291.127. Submeters or Point-of-Use Submeters and Plumbing Fixtures.

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SUBCHAPTER I. WHOLESALE WATER PETITIONS

30 TAC §§291.128 - 291.131

Statutory Authority

The amendments and new rules are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; TWC, §11.036 concerning the sale of conserved or stored water; and TWC, §11.041 concerning complaints for the denial of water

The proposed amendments and new rules implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.128. Petition [or Appeal] Concerning Wholesale Water [Rate]. This subchapter sets forth substantive guidelines and procedural requirements concerning[:]

[(1)] a petition [to review rates charged for the sale of water for resale] filed pursuant to Texas Water Code, §§11.036 - 11.041. [Chapter 11 or 12; or]

[(2) an appeal pursuant to Texas Water Code, §13.043(f) (appeal by retail public utility concerning a decision by a provider of water or sewer service).]

§291.129. Petition.

(a) The petitioner must file a written petition with the commission accompanied by the filing fee required by the Texas Water Code. The petitioner must serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties.

(b) The petition must clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks. The petitioner must attach any applicable contract to the petition.

§291.130. Contents of Petition under Texas Water Code, §§11.036-11.041.

(a) A person seeking relief under the Texas Water Code, §§11.036 - 11.041 should include in a written petition to the commission, the following information, as applicable to the section of the Texas Water Code under which petitioner seeks relief:

(1) the petitioner's name;

(2) the name of the entity from which water is received or sought;

(3) an explanation of why petitioner is entitled to receive or use the water;

(4) that the petitioner is willing and able to pay a just and reasonable price for the water;

(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

(b) Water suppliers seeking relief under the Texas Water Code, §§11.036 - 11.041 should include in a written petition for relief to the commission, the following information:

(1) petitioner's name;

(2) the name of the ratepayers to whom water is rendered;

(3) an explanation of why petitioner is entitled to the relief requested;

(4) that the petitioner is willing and able to supply water at a just and reasonable price; and

(5) that the price demanded by petitioner for the water is just and reasonable and is not discriminatory.

(c) If the petition for relief is accompanied by the deposit stipulated in the Texas Water Code, the executive director shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.

(d) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition. In the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction.

§291.131. Executive Director's Review of Petition [~~or Appeal~~].

[~~(a)~~] When a petition [~~or appeal~~] is filed, including a petition subject to the Texas Water Code (TWC), §11.041, the executive director shall determine within ten days of the filing of the petition [~~or appeal~~] whether the petition contains all of the information required by this subchapter. For purposes of this section only, the executive director's review of probable grounds shall be limited to a determination whether the petitioner has met the requirements of §291.129 [~~§291.130~~] of this title (relating to Petition [~~or Appeal~~]). If the executive director determines that the petition [~~or appeal~~] does not meet the requirements of §291.129 [~~§291.130~~] of this title, the executive director shall inform the petitioner of the deficiencies within the petition [~~or appeal~~] and allow the petitioner the opportunity to correct these deficiencies. If the executive director determines that the petition [~~or appeal~~] does meet the requirements of §291.129 [~~§291.130~~] of this title, the executive director shall forward the petition [~~or appeal~~] to the State Office of Administrative Hearings for an evidentiary hearing under TWC, §§11.036 - 11.041 as applicable.

[~~(b) For a petition or appeal to review a rate that is charged pursuant to a written contract, the executive director will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on public interest.~~]

[~~(c) For a petition or appeal to review a rate that is not charged pursuant to a written contract, the executive director will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate.~~]

[~~(d) If the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction.~~]

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

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SUBCHAPTER I. WHOLESALE WATER OR SEWER SERVICE

30 TAC §§291.129, 291.130, 291.132 - 291.138

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.129. Definitions.
§291.130. Petition or Appeal.
§291.132. Evidentiary Hearing on Public Interest.
§291.133. Determination of Public Interest.
§291.134. Commission Action to Protect Public Interest, Set Rate.
§291.135. Determination of Cost of Service.
§291.136. Burden of Proof.
§291.137. Commission Order To Discourage Succession of Rate Disputes.
§291.138. Filing of Rate Data.

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SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

30 TAC §§291.141, 291.146, 291.147

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.141. Supervision of Certain Utilities.

§291.146. Municipal Rates for Certain Recreational Vehicle Parks.

§291.147. Temporary Rates for Services Provided for a Nonfunctioning System.

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

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30 TAC §291.142, §291.143

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 294 passed by the 85th Texas Legislature, 2017.

§291.142. Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver.

(a) The commission or the executive director, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that:

(1) has discontinued or abandoned operations or the provision of services; or

(2) is being referred to the attorney general for the appointment of a receiver under Texas Water Code (TWC), §13.412 for:

(A) having expressed an intent to abandon or abandoned operation of its facilities; [~~or~~]

(B) having violated a final order of the commission; [~~or~~]

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission; or [~~,~~]

(D) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(i) TWC, Chapter 7;

(ii) TWC, Chapter 13; or

(iii) Texas Health and Safety Code, Chapter 341.

(b) The commission or the executive director may appoint a person under this section by emergency order under Chapter 35 of this title (relating to Emergency and Temporary Order and Permits; Temporary Suspension or Amendment of Permit Conditions). A corporation may be appointed a temporary manager.

(c) Abandonment includes, but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

§291.143. Operation of a Utility by a Temporary Manager.

(a) By emergency order under Texas Water Code (TWC), §5.507 and §13.4132, the commission or the executive director may appoint a person under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or [~~and~~] Amendment of Permit Conditions) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC [~~Texas Water Code~~], §13.412.

(b) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The temporary manager shall serve a term of 180 days [~~one year~~], unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission;

(3) the temporary manager is discharged from his responsibilities by the commission; or

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general [~~Attorney General~~].

(e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(h) The temporary manager shall report to the executive director on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the executive director.

(i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

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SUBCHAPTER K. PROVISIONS REGARDING MUNICIPALITIES

30 TAC §§291.150 - 291.153

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC, and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.150. Jurisdiction of Municipality: Surrender of Jurisdiction.

§291.151. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.

§291.152. Notification Regarding Use of Revenue.

§291.153. Fair Wholesale Rates for Wholesale Water Sales to a District.

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

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802900
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 239-6812

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §293.11 and §293.44.

Background and Summary of the Factual Basis for the Proposed Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 291, Utility Regulations.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs are proposed for removal, subsequent paragraphs are renumbered, accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

§293.11, Information Required to Accompany Applications for Creation of Districts

The commission proposes to amend §293.11(h) to remove paragraph (11), because the language pertains to functions that were transferred from the commission to PUC in HB 1600 and SB 567.

§293.44, Special Considerations

The commission proposes to amend §293.44(b)(7) to remove the reference to Chapter 291, Subchapter G, which pertains to functions that were transferred from the commission to PUC in HB 1600 and SB 567.

Fiscal Note: Cost to State and Local Government 1

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to modify rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The proposed amendments to §293.11 and §293.44 modify rules that are no longer applicable to the commission as a result of the transfer of the responsibility for the economic regulation of water and wastewater utilities to the PUC.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred $1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of $184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated $499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was $3,567,824 and $3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was $3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

Public Benefit and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking amends TCEQ's rules for a program transferred to the PUC. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The PUC Sunset Legislation, HB

1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 293 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 293 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend by removing obsolete references and language relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§293.11. Information Required to Accompany Applications for Creation of Districts.

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

(1) $700 nonrefundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Texas Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Texas Local Government Code, §42.042, have been followed;

(3) if city consent was obtained under paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(e) and (i);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting a creation petition and report to the appropriate commission regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement, as appropriate, to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

(11) other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC, Chapter 36, Groundwater Conservation Districts, are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for TWC, Chapter 51, Water Control and Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §51.013, requesting creation signed by the majority of persons holding title to land representing a total value of more than 50% of value of all land in the proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail; and

(F) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to

the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district, and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §51.072;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(9) other information as required by the executive director.

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §54.014 and §54.015, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by tax rolls of the central appraisal district. If there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed; and

(E) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

(8) for districts proposed to be created within the corporate boundaries of a municipality, evidence that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in Texas Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with TWC, §49.052 and §54.102;

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee;

(11) if the petition within the application includes a request for road powers, information meeting the requirements of §293.202(b) of this title (relating to Application Requirements for Commission Approval); and

(12) other data and information as the executive director may require.

(e) Creation applications for TWC, Chapter 55, Water Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §55.040, signed by persons holding title to more than 50% of all land in the proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district; and

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required

by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for TWC, Chapter 58, Irrigation Districts, within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §58.013 and §58.014, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for TWC, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by TWC, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or extraterritorial jurisdiction the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included;

(2) evidence that a copy of the petition was filed with the city clerk in each city where the proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates; and

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by TWC, §49.052 and §59.021;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for TWC, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by TWC, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board;

(E) a request specifying each purpose for which the proposed district is being created; and

(F) if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of the proposed district as described in the petition;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography, and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement;

(ii) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC, Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution;

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §65.102, where applicable;

~~[(11) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.109 of this title (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and §291.112 of this title (relating to Transfer of Certificate of Convenience and Necessity);]~~

(11) [~~(12)~~] if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(12) [~~(13)~~] other information as the executive director requires.

(i) Creation applications for TWC, Chapter 66, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by TWC, §§66.014 - 66.016, requesting creation of a storm water control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography, and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage; and

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary, and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §66.102, where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Texas Local Government Code, Chapter 375, Municipal Management Districts in General, shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, by verifiable landmarks, including a road, creek, or railroad line, or by lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District;"[~~:~~]

(E) list of proposed initial directors and experience and term of each; and

(F) a resolution of municipality in support of creation, if inside a city;

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Texas Local Government Code, Chapter 375, including budget, statement of expenses, revenues, and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with Texas Local Government Code, §375.063; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee.

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

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §293.44

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, wastewater, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project. Pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, wastewater, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this paragraph [~~subsection~~], "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this paragraph [~~subsection~~], "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a licensed professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, wastewater, or drainage, under contracts authorized under Texas Local Government Code, §552.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, wastewater, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection [~~and Chapter 291, Subchapter G of this title (relating to Certificates of Convenience and Necessity)~~].

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

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Robert Martinez
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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.62

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §305.62.

Background and Summary of the Factual Basis for the Proposed Rule

The TCEQ proposes to implement a federal rule update as well as respond to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA-UC) in October 2016 (Project Number 2017-005-PET-NR; approved on December 15, 2016, to initiate rulemaking). The rulemaking would modify rules in 30 TAC in order to fulfill the requirements of an Agreement State program for radioactive material licenses and also to clarify and streamline rules. The proposed revisions in §305.62 would change the category for certain types of radioactive material license amendment applications dealing with reductions in financial assurance.

This rulemaking includes corresponding changes to 30 TAC Chapter 331, Underground Injection Control and Chapter 336, Radioactive Substance Rules.

Section Discussion

§305.62, Amendments

Under current rule, any reduction in the amount of financial assurance for a radioactive materials license triggers as a major amendment application. This practice is not always consistent with other programs that require financial assurance. If a licensee completes required closure (such as decommissioning or groundwater restoration) and the agency has approved such closure, financial assurance for that closure is no longer needed and a major amendment application for the license should not be required to reduce the financial assurance. In some cases, approval of the licensee's closure activity may also require concurrence of the Nuclear Regulatory Commission. The commission proposes to amend §305.62(i) so that a licensee would submit a minor amendment application for a reduction in financial assurance as a result of completed closure activities.

The commission proposes an amendment to §305.62(i)(1)(J) to delete the word "amounts" and add the phrase "unless such a reduction occurs as a result of completed closure activities that have been approved by the appropriate regulatory authority." This amendment would reduce regulatory costs and time requirements.

The commission proposes an amendment to §305.62(i)(2)(B) to delete the word "or" as a result of proposed §305.62(i)(2)(C).

The commission proposes an amendment to §305.62(i)(2)(C) to add the phrase "authorizes a reduction in financial assurance as a result of completed closure activities that have been approved by the appropriate regulatory authority; or." This amendment would reduce regulatory costs and time requirements.

The commission proposes an amendment to renumber §305.62(i)(2)(D) resulting from proposed §305.62(i)(2)(C).

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule, and no fiscal implications are anticipated for other units of state or local government.

The rulemaking is proposed in response to a petition filed by TMRA-UC. The proposed rule recategorizes a specific action from a major to minor amendment under Chapter 305. Under this proposal, after the appropriate regulatory authority approves the completed closure activities for a site, the permit holder could gain authorization to reduce the financial assurance by pursuing a minor amendment to the permit application, instead of a major amendment.

The commission has found that amendments to radioactive materials licenses are not expected with a known, regular frequency and are only initiated by the regulated entity. The regulated entities will determine if they would seek an amendment for a reduction to financial assurance or if they would wait until the entire license is ready to be terminated. No permit holder has filed such an amendment within the last three years. Therefore, the exact fiscal implication cannot be determined; however, if there would be any impact, it would be a decrease in major amendment fee revenue to the agency.

The major amendment application fee under §336.103(d) is $50,000, and under that section the minor amendment fee would be determined by agency cost recovery methods. For all other radioactive licenses under §336.105(c), the major amendment application fee is $10,000, and there is no application fee for a minor amendment application. In the unlikely circumstance that each license holder would file a major amendment under the specified circumstances in one year, the potential decrease in fee revenue from this proposed rule would be a maximum of $190,000.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes would be the likelihood of earlier action being taken to request partial closure of uranium recovery sites. The proposal does not alter the health and safety standards relating to the closing of a site, nor does it alter the level of financial assurance that may or may not be required when a site is closed.

The proposed rule may result in fiscal implications for businesses or individuals. The proposed rule may result in a decrease in the fees paid under §336.103(d) and §336.105(c), if the regulated entities select to file an amendment application for the reduction of financial assurance. The rule may also provide greater flexibility for regulated entities by allowing them to reduce costs in the process of completing closure activities for a site.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendment would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule may give greater regulatory flexibility to licensees who meet the definition of small businesses.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the statute. A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action is procedural and changes the category of certain radioactive materials license applications dealing with financial assurance. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendment does not alter in a material way the existing substantive requirements for radioactive material licensees.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government

Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission implements an Agreement State program under the federal Atomic Energy Act and must maintain a compatible program with the Nuclear Regulatory Commission. The proposed revision for the type of amendment application for certain reductions in financial assurance does not exceed a standard of federal law. There are no federal standards regarding amendment categories for a reduction in financial assurance resulting from completed closure activity. The proposed rule is compatible with federal law.

The proposed rule does not exceed a requirement of state law. Texas Health and Safety Code (THSC), Chapter 401, the Radiation Control Act, establishes requirements for the commission's radioactive materials licensing program. The Radiation Control Act does not address categories of license amendment applications dealing with reductions in financial assurance. The proposed rulemaking is consistent with THSC, Chapter 401.

The commission also determined that the proposed rule does not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the Nuclear Regulatory Commission under the authority of the Atomic Energy Act. The proposed revision for the type of amendment application for certain reductions in financial assurance does not exceed a requirement of a delegation agreement or the state's agreement with the Nuclear Regulatory Commission for maintaining a compatible licensing program.

The commission also determined that the rule is proposed under specific authority of the Texas Radiation Control Act, THSC Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation, the licensing of source material recovery and disposal of radioactive materials.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rule and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of the proposed rule would not constitute a taking of real property.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the rules. The proposed rule is procedural and changes the category of certain radioactive materials license applications dealing with financial assurance.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 9, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2018-017-336-WS. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Bobby Janecka, Radioactive Materials Section at (512) 239-6415.

Statutory Authority

The amendments are proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.109, which requires

the commission to establish the type and amount of financial assurance by rule; THSC, §401.2625, which provides the commission authority to grant licenses for source material recovery and processing, and for the storage, processing or disposal of by-product material; and THSC, §401.412, which provides the commission authority to adopt rules for the recovery and processing of source material and the disposal of by-product material. The proposed amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The amendments implement THSC, Chapter 401, including THSC, §§401.011, 401.051, 401.103, 401.104, 401.107, and 401.109.

§305.62. Amendments.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications [~~Class I Modifications~~]), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Permit Denial, Suspension, and Revocation [~~Corrections of Permits~~]), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste (MSW) permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit or Post-Closure Order). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments, other than amendments for radioactive material licenses in subsection (i) of this section.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, Including [~~including~~] Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 Code of Federal Regulations §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) [~~there are~~] material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control [~~(UIC)~~] area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

(i) Types of amendments for radioactive material licenses authorized in Chapter 336 of this title (relating to Radioactive Substance Rules).

(1) Major amendments. A major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes determined by the executive director not to be authorized in the existing license;

(C) authorizes a change in the licensee, owner or operator of the licensed facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency;

(F) authorizes enlargement of the licensed area beyond the boundaries of the existing license;

(G) authorizes a change of the method specified in the license for disposal of by-product material as defined in the Texas Radiation Control Act, Texas Health and Safety Code, §401.003(3)(B);

(H) grants an exemption from any provision of Chapter 336 of this title;

(I) authorizes a new technology or new process that requires an engineering review, unless the new technology or new process meets criteria in §305.62(i)(2)(A) of this title;

(J) authorizes a reduction in financial assurance unless such a reduction occurs as a result of completed closure activities that have been approved by the appropriate regulatory authority [~~amounts~~]; or

(K) authorizes a change which has a potentially significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required;

(2) Minor amendments. An application for a minor amendment is subject to public notice requirements of Chapter 39 of this title (relating to Public Notice), but is not subject to an opportunity to request a contested case hearing. A minor amendment is one which:

(A) authorizes a modification that is not specifically authorized in an existing condition in a license issued under Chapter 336 of this title and which does not pose a potential detrimental impact on public health and safety, worker safety, or environmental health;

(B) authorizes the addition of previously reviewed production or processing equipment, and where an environmental assessment has been completed; [~~or~~]

(C) authorizes a reduction in financial assurance as a result of completed closure activities that have been approved by the appropriate regulatory authority; or

(D) [~~(C)~~] any amendment, after completion of a review, the executive director determines is a minor amendment.

(3) Administrative amendments. An application for an administrative amendment is not subject to public notice requirements and is not subject to an opportunity to request a contested case hearing. An administrative amendment is one which:

(A) corrects a clerical or typographical error;

(B) changes the mailing address or other contact information of the licensee;

(C) changes the Radiation Safety Officer, if the person meets the criteria in Chapter 336 of this title;

(D) changes the name of an incorporated licensee that amends its articles of incorporation only to reflect a name change, if updated information is provided by the licensee, provided that the Secretary of State can verify that a change in name alone has occurred;

(E) is a federally-mandated change to a license;

(F) corrects citations in license from rules/statutes;

(G) is necessary to address emergencies;

(H) authorizes minor modifications to existing facilities, consistent with individual license conditions for a specified facility with demonstrated performance, that enhance public health and safety or protection of the environment;

(I) authorizes minor modifications to existing facilities, consistent with individual license conditions for a specified facility with demonstrated performance, to enhance environmental monitoring programs and protection of the environment; or

(J) any amendment, after completion of a review, the executive director determines is an administrative amendment.

(j) This subsection applies only to major amendments to MSW permits.

(1) A full permit application shall be submitted when applying for a major amendment to an MSW permit for the following changes:

(A) an increase in the maximum permitted elevation of a landfill;

(B) a lateral expansion of an MSW facility other than changes to expand the buffer zone as defined in §330.3 of this title (relating to Definitions). Changes to the facility legal description to increase the buffer zone may be processed as a permit modification requiring public notice under §305.70(k) of this title;

(C) any increase in the volumetric waste capacity at a landfill or the daily maximum limit of waste acceptance for a Type V processing facility; and

(D) upgrading of a permitted landfill facility to meet the requirements of 40 Code of Federal Regulations Part 258, including facilities which previously have submitted an application to upgrade.

(2) For all other major amendment applications for MSW facilities, only the portions of the permit and attachments to which changes are being proposed are required to be submitted. The executive director's review and any hearing or proceeding on a major amendment subject to this paragraph shall be limited to the proposed changes, including information requested under paragraph (3) of this subsection. Examples of changes for which less than a full application may be submitted for a major amendment include:

(A) addition of an authorization to accept a new waste stream (e.g., Class 1 industrial waste);

(B) changes in waste acceptance and operating hours outside the hours identified in §330.135 of this title (relating to Facility Operating Hours), or authorization to accept waste or operate on a day not previously authorized; and

(C) addition of an alternative liner design, in accordance with §330.335 of this title (relating to Alternative Liner Design).

(3) The executive director may request any additional information deemed necessary for the review and processing of the application.

(k) This subsection applies only to temporary authorizations made to existing MSW permits or registrations.

(1) Examples of temporary authorizations include:

(A) the use of an alternate daily cover material on a trial basis to properly evaluate cover effectiveness for odor and vector control;

(B) temporary changes in operating hours to accommodate special community events[,] or prevent disruption of waste services due to holidays;

(C) temporary changes necessary to address disaster situations; and

(D) temporary changes necessary to prevent the disruption of solid waste management activities.

(2) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be conducted, an explanation of why the authorization is necessary, and how long the authorization is needed.

(3) The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days, if circumstances warrant the extension.

(4) The executive director may provide verbal authorization for activities related to disasters as described in paragraph (1)(C) of this subsection. When verbal authorization is provided, the permittee or registrant shall document both the details of the temporary changes and the verbal approval, and provide the documentation to the executive director within three days of the request.

(5) Temporary authorizations for MSW [~~municipal solid waste~~] facilities may include actions that would be considered to be either a major or minor change to a permit or registration. Temporary authorizations apply to changes to an MSW facility or its operation that do not reduce the capability of the facility to protect human health and the environment.

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

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802864
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 239-2613

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §331.84 and §331.107.

Background and Summary of the Factual Basis for the Proposed Rules

The TCEQ proposes to implement a federal rule update as well as respond to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA-UC) in October 2016 (Project Number 2017-005-PET-NR; approved on December 15, 2016, to initiate rulemaking). The rulemaking would modify rules in 30 TAC in order to fulfill the requirements of an Agreement State program for radioactive material licenses and also to clarify and streamline rules. The proposed rules in Chapter 331 address requirements for injection wells used for *in situ* uranium operations to improve the wording of the timing requirement for twice a month sampling; clarify that restoration has been completed when mean concentration values fall below the corresponding restoration table values; change the reporting requirements for restoration progress reports; and clarify the timing requirements for stability sampling and the submission of an amendment application for restoration table revision.

This rulemaking includes corresponding changes to 30 TAC Chapter 305, Consolidated Permits and Chapter 336, Radioactive Substance Rules.

Section by Section Discussion

§331.84, Monitoring Requirements

The commission proposes an amendment to §331.84(c) to replace the word "a" with the words "each calendar," replace the phrase "For a given calendar month, the second" with the word "Every," and replace the phrase "15 days after the first sample is collected" with the phrase "between 10 and 20 days from when the previous sample was collected." These changes would add clarity and streamline current fluid level water quality monitoring requirements to assure that the twice monthly sampling is spread out through a given month, but is not too proscriptive so that the permittee can adequately plan or adjust sampling activities.

§331.107, Restoration

The commission proposes an amendment to §331.107(a)(2)(A) to replace the words "sample measurements" with the words "mean concentration values" and replace the word "measurements" with the words "mean concentration values." These changes would add accuracy to restoration parameters for groundwater sampling. Restoration is established when the mean concentration values are below the restoration table values, not all sample measurements.

The commission proposes an amendment to §331.107(d) to add the phrase "and until receiving written acknowledgment from the executive director that restoration for the production areas has been accomplished." This change would add clarity by aligning the language in subsection (d) with the current language in subsection (f). The executive director must acknowledge that groundwater restoration has been achieved before the permittee can commence closure activities.

The commission proposes an amendment to §331.107(d)(1) to add the phrase "to monitor restoration progress for certain parameters, as approved by the executive director." This change would clarify the type of analytical data generated that is required for reports and includes those parameters that have been amended or those specifically required by the commission.

The commission proposes an amendment to §331.107(d)(2) to add the phrase "or for each restoration parameter that has been amended in accordance with subsection (g) of this section." This change would add clarity by aligning the language in subsection (d)(2) with the amendment requirements in subsection (g), so that reporting requirements apply only to parameters than have been amended.

The commission proposes an amendment to §331.107(f) to replace the word "certain" with the word "all" related to parameters listed in the restoration table, add the phrase "Stability sampling may commence 60 days after cessation of restoration operations," and correct the word "insure" to the word "ensure." These changes would improve stability samples and restoration operations to better protect human health and the environment and to correct incorrect grammar.

The commission proposes an amendment to §331.107(g) to the procedures for the amendment of a restoration table or range table values. These changes would improve the clarity of the procedures by removing confusing language and aligning subsection (g) with subsection (f). Under the current rule language, it is impossible to comply with the specified timing requirement for the submission of a restoration table amendment application if that application must include all of the stability sampling information as part of the application.

The commission proposes an amendment to §331.107(g)(3) to the procedures for the amendment of a restoration table. These changes would add additional clarity of the procedures by further explaining the requirements for stability sampling. Stability must be demonstrated when a permittee is seeking a restoration table amendment to increase a restoration table value to show that the particular parameter has stabilized. If the restoration table has been amended, stability sampling must be repeated to show that the revised parameter has stabilized for a two-year period.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in response to a petition filed by TMRA-UC. The rulemaking proposal alters the timeframe for the collection of water quality samples in §331.84(c). In §331.107, the proposed rulemaking changes terminology used to refer to groundwater samples for aquifer restoration and provides greater detail to the regulations for aquifer restoration timetables, reports, stability sampling and the process for amending restoration tables. These proposed changes are not expected to have any impact on agency operations or procedures and are not expected to affect any other units of state or local government.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a more detailed process for the regulation of Class III Underground Injection Control (UIC) permits. The proposed rules should result in greater understanding of the procedures by the public and regulated community.

The proposed rules are not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rules do not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the statute. A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements clarifying changes for the timing of groundwater sampling activities, reporting requirements, and the timing of amendment applications and stability demonstrations for area permits and production area authorizations for *in situ* recovery of uranium. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendments do not alter in a material way the existing requirements for injection wells used for *in situ* recovery of uranium.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission's UIC program is authorized by the United States Environmental Protection Agency (EPA) and the proposed changes for injection well permits and production area authorizations, do not exceed a standard of federal law or requirement of a delegation agreement. There are no federal standards for production area authorizations. The proposed rules are compatible with federal law.

The proposed rules do not exceed a requirement of state law. Texas Water Code (TWC), Chapter 27, the Injection Well Act, establishes requirements for the commission's UIC program. TWC, §27.0513 requires the commission to establish application requirements, technical requirements, including the methods for determining restoration table values and procedural requirements for a production area authorization. The proposed rulemaking is consistent with TWC, Chapter 27.

The proposed rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The commission's UIC program is authorized by the EPA, and the proposed rules are compatible with the state's delegation of the UIC program.

The proposed rules are adopted under specific laws. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §27.019, requires the commission to adopt rules reasonably required to implement the Injection Well Act, and TWC, §27.0513 authorizes the commission to adopt rules to establish requirements for production area authorizations.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property.

The purpose of these proposed rules is to implement clarifying changes for the timing of groundwater sampling activities, reporting requirements, and the timing of amendment applications and stability demonstrations for area permits and production area authorizations for *in situ* recovery of uranium. The proposed rules in Chapter 331 do not substantially change the requirements for proper operation or closure of injection wells or the requirement for groundwater restoration following *in situ* mining operations.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules for injection well permits and production area authorizations do not affect real property. The proposed rules apply only to those who use or apply for permit or authorization of injection wells for *in situ* recovery of uranium. The proposed rules make clarifying changes to the timing of groundwater sampling activities, reporting requirements, and the timing of amendment applications and stability demonstrations for area permits and production area authorizations for *in situ* recovery of uranium.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 9, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2018-017-336-WS. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Bobby Janecka, Radioactive Materials Section at (512) 239-6415.

SUBCHAPTER E. STANDARDS FOR CLASS III WELLS

30 TAC §331.84

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and TWC, §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendment implements TWC, §27.0513.

§331.84. Monitoring Requirements.

(a) Injection fluid shall be analyzed for physical and chemical characteristics with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis is incorrect or incomplete, a new analysis shall be submitted to the executive director.

(b) The injection pressure, the injection volume, and the production volume shall be recorded.

(c) Fluid level when required by permit and the parameters chosen to measure water quality in monitor wells completed in the injection zone shall be monitored twice each calendar [a] month. Every [For a given calendar month, the second] sample shall be collected between 10 and 20 days from when the previous sample was collected [15 days after the first sample is collected].

(d) Specified wells within 1/4 mile of the injection site shall be monitored at least once every three months to detect any migration from the injection zone into fresh water.

(e) All Class III wells may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well operating with a common manifold. Separate monitoring systems for each well are not required, provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

(f) Quarterly monitoring of wells required by §331.82(h) of this title (relating to Construction Requirements).

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

Filed with the Office of the Secretary of State on June 29, 2018.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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SUBCHAPTER F. STANDARDS FOR CLASS III WELL PRODUCTION AREA DEVELOPMENT

30 TAC §331.107

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and TWC, §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendment implements TWC, §27.0513.

§331.107. Restoration.

(a) Aquifer restoration. Groundwater in the production zone within the production area must be restored when mining is complete. Each Class III permit or production area authorization shall contain a description of the method for determining that groundwater has been restored in the production zone within the production area. Restoration must be achieved for all values in the restoration table of all parameters in the suite established in accordance with the requirements of §331.104(b) of this title (relating to Establishment of Baseline and Control Parameters for Excursion Detection).

(1) Restoration table. Each permit or production area authorization shall contain a restoration table for all parameters in the suite established in accordance with the requirements of §331.104(b) of

this title. The restoration value for each parameter listed in the restoration table cannot exceed the maximum value for the respective parameter in the permit range table required under §331.82(e)(7) of this title (relating to Construction Requirements). A restoration table value for a parameter shall be established by:

(A) the mean concentration or value for that parameter based on all measurements from groundwater samples collected from baseline wells prior to mining activities; or

(B) a statistical analysis of baseline well information proposed by the owner or operator and approved by the executive director that demonstrates that the restoration table value is representative of baseline quality.

(2) Achievement of restoration. Achievement of restoration shall be determined using one of the following methods:

(A) when all mean concentration values [~~sample measurements~~] from groundwater samples from all baseline wells for a restoration parameter are equal to or below (or, in the case of pH, within an established range) the restoration table value for that parameter, then restoration for that parameter will be assumed to have occurred. Complete restoration will be assumed to have occurred when mean concentration values [~~measurements~~] from all samples from all baseline wells for all restoration parameters are equal to or below (or, in the case of pH, within an established range) each respective restoration table value; or

(B) a statistical analysis of information from groundwater samples from baseline wells proposed by the owner or operator and approved by the executive director that demonstrates that the groundwater quality is representative of the restoration table values.

(b) Mining completion. When the mining of a permit or production area is completed, the permittee shall notify the appropriate commission regional office and the executive director and shall proceed to reestablish groundwater quality in the affected permit or production area aquifers in accordance with the requirements of subsection (a) of this section. Restoration efforts shall begin as soon as practicable but no later than 30 days after mining is completed in a particular production area. The executive director, subject to commission approval, may grant a variance from the 30-day period for good cause shown.

(c) Timetable. Aquifer restoration, for each permit or production area, shall be accomplished in accordance with the timetable specified in the currently approved mine plan, unless otherwise authorized by the commission. Authorization for expansion of mining into new production areas may be contingent upon achieving restoration progress in previously mined production areas within the schedule set forth in the mine plan. The commission may amend the permit to allow an extension of the time to complete restoration after considering the following factors:

(1) efforts made to achieve restoration by the original date in the mine plan;

(2) technology available to restore groundwater for particular parameters;

(3) the ability of existing technology to restore groundwater to baseline quality in the area;

(4) the cost of achieving restoration by a particular method;

(5) the amount of water which would be used or has been used to achieve restoration;

(6) the need to make use of the affected aquifer; and

(7) complaints from persons affected by the permitted activity.

(d) Reports. Beginning six months after the date of initiation of restoration of a permit or production area, as defined in the mine plan, and until receiving written acknowledgment from the executive director that restoration for the production areas has been accomplished, the operator shall provide to the executive director semi-annual restoration progress reports[~~until restoration is accomplished for the production area~~]. This report shall contain the following information:

(1) all analytical data generated to monitor restoration progress for certain parameters, as approved by the executive director, during the previous six months;

(2) graphs of analysis for each restoration parameter for each baseline well or for each restoration parameter that has been amended in accordance with subsection (g) of this section;

(3) the volume of fluids injected and produced;

(4) the volume of fluids disposed;

(5) water level measurements for all baseline and monitor wells, and for any other wells being monitored;

(6) a potentiometric map for the area of the production area authorization, based on the most recent water level measurements; and

(7) a summary of the progress achieved towards aquifer restoration.

(e) Restoration table values achieved. When the permittee determines that constituents in the aquifer have been restored to the values in the Restoration Table, the restoration shall be demonstrated by stability sampling in accordance with subsection (f) of this section.

(f) Stability sampling. The permittee shall obtain stability samples and complete an analysis for all [~~certain~~] parameters listed in the restoration table from all production area baseline wells. Stability sampling may commence 60 days after cessation of restoration operations. Stability samples shall be conducted at a minimum of 30-day intervals for a minimum of three sample sets and reported to the executive director. The permittee shall notify the executive director at least two weeks in advance of sample dates to provide the opportunity for splitting samples and for selecting additional wells for sampling, if desired. To ensure [~~insure~~] water quality has stabilized, a period of one calendar year must elapse between cessation of restoration operations and the final set of stability samples. Upon acknowledgment in writing by the executive director confirming achievement of final restoration, the permittee shall accomplish closure of the area in accordance with §331.86 of this title (relating to Closure).

(g) Amendment of restoration table or range table values. After an appropriate effort has been made to achieve restoration in accordance with the requirements of subsection (a) of this section, the permittee may cease restoration operations, reduce bleed and request that the restoration table be amended. [~~An amended restoration table value for each parameter listed in the restoration table cannot exceed the maximum value for the respective parameter in the permit range table required under §331.82(e)(7) of this title.~~] With the request for amendment of the restoration table values, the permittee shall submit stability sampling results in accordance with subsection (f) of this section [~~the results of three consecutive sample sets taken at a minimum of 30-day intervals from all production area baseline wells used in determining the restoration table to verify current water quality. Stabilization sampling may commence 60 days after cessation of restoration operations~~]. The permittee shall notify the executive director of his or her intent to cease restoration operations and reduce the bleed 30 days prior to implementing these steps. [~~The permittee shall submit an ap-~~

~~plication for an amendment to the restoration table within 120 days of receipt of authorization from the executive director to cease restoration operations and reduce the bleed.~~] If any restoration table value for any parameter listed in the restoration table will exceed the maximum value for the respective parameter in the permit range table, the permittee must submit an application for a major amendment of the permit range table.

(1) In determining whether the restoration table or range table should be amended, the commission will consider the following items addressed in the request:

(A) uses for which the groundwater in the production area was suitable at baseline water quality levels;

(B) actual existing use of groundwater in the production area prior to and during mining;

(C) potential future use of groundwater of baseline quality and of proposed restoration quality;

(D) the effort made by the permittee to restore the groundwater to baseline;

(E) technology available to restore groundwater for particular parameters;

(F) the ability of existing technology to restore groundwater to baseline quality in the area under consideration;

(G) the cost of further restoration efforts;

(H) the consumption of groundwater resources during further restoration; and

(I) the harmful effects of levels of particular parameter.

(2) The commission may amend the restoration table or range table if it finds that:

(A) reasonable restoration efforts have been undertaken, giving consideration to the factors listed in paragraph (1) of this subsection;

(B) the values for the parameters describing water quality have stabilized for a period of one year;

(C) the formation water present in the exempted portion of the aquifer would be suitable for any use to which it was reasonably suited prior to mining; and

(D) further restoration efforts would consume energy, water, or other natural resources of the state without providing a corresponding benefit to the state.

(3) If the restoration table is amended, stability [~~restoration~~] sampling shall be repeated [~~commence~~] and conducted [~~proceed~~] as described in subsection (f) of this section, except that only the parameters that were amended in accordance with this subsection will be sampled and a period of two calendar years must elapse between cessation of restoration operations and the final set of stability samples [~~the stability period shall be for a period of two years~~] unless the permittee [~~owner or operator~~] can demonstrate through modeling or other means that a period of less than two years is appropriate for a demonstration of stability.

(4) If the request for an amendment of the restoration table or range table values is not granted, the permittee shall restart restoration efforts.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §336.1115

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendmentsto §336.1115.

Background and Summary of the Factual Basis for the Proposed Rule

The TCEQ proposes to implement a federal rule update as well as respond to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association in October 2016 (Project Number 2017-005-PET-NR; approved on December 15, 2016, to initiate rulemaking). The rulemaking would modify rules in 30 Texas Administrative Code in order to fulfill the requirements of an Agreement State program for radioactive material licenses and also to clarify and streamline rules. The proposed changesto §336.1115 correct a citation in the rule.

This rulemaking includes corresponding changes to 30 TAC Chapter 305, Consolidated Permits and 30 TAC Chapter 331, Underground Injection Control.

Section Discussion

§336.1115, Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas

The commission proposes to amend §336.1115(d)(2) to correct a reference to the citation for the definition of the term "principal activities." "Principal activities" is defined in §336.1105(30).

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The rulemaking is proposed as part of a response to a federal rule update and corrects an incorrect cross-reference, §336.1115(d)(2), relating to the definition of the term "principal activities." Correcting the cross-reference will not affect the agency, other units of government, nor applicable regulated entities.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the proposed changes will be a clear and concise rule that

is easier to understand for the agency and any affected regulated entities.

The proposed rule is not expected to result in fiscal implications for businesses or individuals. The proposed rule modifies an incorrect cross-reference.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The proposed amendment would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule modifies an incorrect cross-reference.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the statute. A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action is clerical and corrects a citation to the defined term "principal activities." The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendment does not alter in a material way the existing substantive requirements for radioactive material licensees.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission implements an Agreement State program under the federal Atomic Energy Act and must maintain a compatible program with the United States Nuclear Regulatory Commission (NRC). The proposed revision to correct a rule citation does not exceed a standard of federal law. The proposed rule is compatible with federal law.

The proposed rule does not exceed a requirement of state law. Texas Health and Safety Code (THSC), Chapter 401, the Radiation Control Act, establishes requirements for the commission's radioactive materials licensing program. The proposed rulemaking is consistent with THSC, Chapter 401.

The commission also determined that the proposed rule does not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The proposed revision to correct a rule citation does not exceed a requirement of a delegation agreement or the state's agreement with the NRC for maintaining a compatible licensing program.

The commission also determined that the rule is proposed under specific authority of the Texas Radiation Control Act, THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources or radiation, the licensing of source material recovery and disposal of radioactive materials.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rule and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of the proposed rule would not constitute a taking of real property.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden

(constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the rule. The proposed rule is clerical and corrects the citation to the defined term "principal activities."

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 9, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2018-017-336-WS. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Bobby Janecka, Radioactive Materials Section at (512) 239-6415.

Statutory Authority

The amendments are proposed under the Texas Radiation Control Act, Chapter 401 of the Texas Health and Safety Code (THSC); THSC, §401.011,which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.2625, which provides the commission authority to grant licenses for source material recovery and processing, and for the storage, processing or disposal of by-product material; and THSC, §401.412, which provides the commission authority to adopt rules for the recovery and processing of source material and the disposal of by-product material. The proposed amendments are also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The proposed amendments implement THSC, Chapter 401, including THSC, §§401.011, 401.051, 401.103, 401.104, 401.107, and 401.265.

§336.1115. Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas.

(a) The term of the specific license is for a fixed term not to exceed ten years.

(b) Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(c) All license provisions continue in effect beyond the expiration date with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee must:

(1) be limited to actions involving radioactive material that are related to decommissioning; and

(2) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements of subsection (e) of this section.

(d) Within 60 days of the occurrence of any of the following, each licensee must provide notification to the agency in writing and either begin decommissioning its site, or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in §336.1111(1)(B) of this title (relating to Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities), so that the buildings or outdoor areas are suitable for release in accordance with subsection (e) of this section if:

(1) the license has expired in accordance with subsection (a) of this section; or

(2) the licensee has decided to permanently cease principal activities, as defined in §336.1105(30) [~~§336.1105(24)~~] of this title (relating to Definitions), at the entire site or in any separate building or outdoor area; or

(3) no principal activities have been conducted for a period of 24 months in any building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(e) Outdoor areas are considered suitable for release for unrestricted use if the following limits are not exceeded.

(1) The concentration of radium-226 or radium-228 (in the case of thorium by-product material) in soil, averaged over any 100 square meters (m^2), may not exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 centimeters (cm) of soil below the surface; and

(B) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(2) The contamination of vegetation may not exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(3) By-product material containing concentrations of radionuclides other than radium in soil (e.g., natural uranium, natural thorium, lead-210), and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the standard in paragraph (1) of this subsection (radium benchmark dose), and must be at levels which are as low as reasonably achievable. If more than one residual radionuclide is present in the same 100 m^2 area, the sum of the ratios for each radionuclide of concentration present to the calculated radium benchmark dose equivalent concentration limits will not exceed "1" (unity). A calculation of the potential peak annual TEDE within 1,000 years to the average member of the critical group that would result from applying the radium standard (not including radon) must be submitted for approval, using the United States Nuclear Regulatory Commission (NRC) staff guidance on the Radium Benchmark Dose Approach.

(f) Coincident with the notification required by subsection (c) of this section, the licensee shall maintain in effect all decommissioning financial security established by the licensee in accordance with §336.1125 of this title (relating to Financial Assurance Requirements) in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security must be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with subsection (l)(5) of this section.

(g) In addition to the provisions of subsection (h) of this section, each licensee must submit an updated closure plan to the agency within 12 months of the notification required by subsection (d) of this section. The updated closure plan must meet the requirements of §336.1111(1)(B) and §336.1125 of this title. The updated closure plan must describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(h) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification in accordance with subsection (d) of this section. The schedule for decommissioning in subsection (d) of this section may not begin until the agency has made a determination on the request.

(i) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(1) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(2) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(3) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(4) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(j) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with subsection (d) of this section if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(k) The procedures listed in subsection (i) of this section may not be carried out prior to approval of the decommissioning plan.

(l) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(1) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(2) a description of planned decommissioning activities;

(3) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(4) a description of the planned final radiation survey;

(5) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(6) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in subsection (p) of this section.

(m) The proposed decommissioning plan may be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the occupational health and safety of workers and the public will be adequately protected.

(n) Except as provided subsection (p) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(o) Except as provided in subsection (p) of this section, when decommissioning involves the entire site, the licensee must request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(p) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor areas and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(1) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(3) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(q) As the final step in decommissioning, the licensee must:

(1) certify the disposition of all radioactive material, including accumulated by-product material;

(2) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with subsection (e) of this section. The licensee shall, as appropriate:

(A) report the following levels:

(i) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(ii) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 cm^2 for surfaces;

(iii) μCi (MBq) per milliliter for water; and

(iv) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(B) specify the manufacturer's name, and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(r) The executive director will provide written notification to specific licensees, including former licensees with license provisions continued in effect beyond the expiration date in accordance with subsection (d) of this section, that the provisions of the license are no longer binding. The executive director will provide such notification when the executive director determines that:

(1) radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with agency requirements;

(4) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the requirements of subsection (e) of this section;

(5) all records required by §336.343 of this title (relating to Records of Surveys) have been submitted to the agency;

(6) the licensee has paid any outstanding fees required by this chapter and has resolved any outstanding notice(s) of violation issued to the licensee;

(7) the licensee has met the applicable technical and other requirements for closure and reclamation of a by-product material disposal site; and

(8) the NRC has made a determination that all applicable standards and requirements have been met.

(s) Licenses for source material recovery or by-product material disposal are exempt from subsections (d)(3), (g), and (h) of this section with respect to reclamation of by-product material impoundments or disposal areas. Timely reclamation plans for by-product material disposal areas must be submitted and approved in accordance with §336.1129(p) - (aa) of this title (relating to Technical Requirements).

(t) A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed shall be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in subsection (e) of this section and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

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

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802867
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 239-2613

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

34 TAC §3.15

The Comptroller of Public Accounts proposes new §3.15, concerning penalty for fraud, intent to evade tax or the alteration, destruction, or concealment of records under Tax Code, §111.061(b) (Penalty on Delinquent Tax or Tax Reports).

Comptroller Decisions have held that the fraud penalty under Tax Code, §111.061(b) may be imposed when an officer or director engaged in or acquiesced in the fraudulent conduct. For example, see Comptroller Decision No. 31,500 (1994). Over time, these examples of sufficient evidence have devolved into examples of required evidence. Recent decisions have required proof that an officer or director was "involved in the day-to-day affairs of the company" to such an extent that the officer or director "was aware or should have been aware of the underreporting of tax." For example, see Comptroller Decision Nos. 110,156 (2017) and 109,842 (2017). Other decisions have required proof that an officer or director was "directly involved" in the fraudulent activities. See Comptroller Decision No. 113,389 (2017). Because these requirements are unnecessarily restrictive and not in the statute or in the common law, the comptroller is proposing this rule to more closely follow the statutory language and the intent of the legislature.

Although the imposition of personal liability on an *individual* under Tax Code, §111.0611 (Personal Liability for Fraudulent Tax Evasion) is generally limited to officers, managers, or directors actively participating in a fraudulent scheme, the imposition of the additional fraud penalty on the *taxpayer* under Tax Code, §111.061(b) is not so limited. Tax Code, §111.061(b) simply re-

quires that the taxpayer engage in the proscribed conduct. There is no statutory requirement that officers or directors actively participate in or even be aware of the proscribed conduct.

Under the common law, corporations may be liable for exemplary damages resulting from the actions of a "vice-principal." *Fort Worth Elevators Co. v. Russell,* 70 S.W.2d 397, 406 (Tex. 1934). The term "vice principal" includes "(a) Corporate officers; (b) these who have authority to employ, direct, and discharge servants of the master; (c) *those engaged in the performance of nondelegable or absolute duties of the master;* and (d) those to whom a master has confided the management of the whole or a department or division of his business." *Fort Worth Elevators,* 70 S.W.2d at 406 (emphasis added).

Nondelegable or absolute duties include the selection of employees, the establishment of appropriate company regulations, and compliance with safety regulations. *See, Fort Worth Elevators Co. v. Russell,* 70 S.W.2d at 406 (employee selection and regulation); *Mo. Pac. R.R. Co. v. Lemon,* 861 S.W.2d 501, 521 (Tex. App. - Houston [14th Dist.] 1993, writ dism'd) (safety regulations).

For absolute duties such as safety law compliance and tax law compliance, business enterprises should not be able to "substantially escape all punitive liability by performing its corporate acts through inferior officers or servants." *See, Fort Worth Elevators,* 70 S.W.2d at 406. Therefore, subsection (a) of the proposed rule provides that the comptroller may impute to the taxpayer not only the acts of officers, directors, managers, and the governing authority of the taxpayer, but also any agent or employee with the actual or apparent authority to prepare or submit information to the comptroller. Taxpayers should not be enabled to avoid liability by shifting important tax-reporting functions to minor employees or agents and then claim ignorance of their conduct.

Subsection (b) provides that the comptroller may consider whether a person is engaged in an independent course of conduct that does not further any purpose of the taxpayer. This language is based on section 7.07(2) of the Restatement 3d of Agency, which has been adopted by the Texas Supreme Court in other contexts. *See, Laverie v. Wetherbe,* 517 S.W.3d 748, 753 (Tex. 2017). This provision reflects the concept that "an employee whose conduct is unrelated to his job, and therefore objectively outside the scope of his employment, is engaging in that conduct for his own reasons." *Id.* at 754. For example, embezzlement from an employer would not be within the scope of employment. If the embezzlement resulted in the underreporting of tax without financial gain to the employer, the comptroller might determine that the acts of an employee should not be imputed to a taxpayer. On the other hand, if the employee engaged in fraud that would have benefitted the taxpayer if undetected, the comptroller might impute the fraud of the employee to the taxpayer.

Subsection (b) does not prevent the comptroller from considering other facts and circumstances in determining whether the act of an employee or agent should be imputed to the taxpayer. For example, the comptroller might consider whether the taxpayer was reckless in employing or delegating responsibility to the person.

Finally, subsection (c) clarifies that the imposition of penalty on the taxpayer is distinct from the imposition of personal liability on an individual.

Based on these principles, the comptroller proposes this rule to more fully state the criteria upon which the agency may assess a penalty under Tax Code, §111.061(b). The comptroller proposes to apply the rule to cases pending on and after the effective date.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by clearly providing the criteria upon which the additional penalty may be imposed, and by following statutory language and legislative intent. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to James Arbogast, Chief Counsel for Hearings and Tax Litigation, Texas Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is 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 the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The new section implements Tax Code, §111.001 (Comptroller to Collect Taxes) and §111.061 (Penalty on Delinquent Tax or Tax Reports).

§3.15. Penalty for Fraud, Intent to Evade Tax or the Alteration, Destruction, or Concealment of Records.

(a) In determining whether to impose the additional penalty under Tax Code, §111.061(b), the comptroller may impute to the taxpayer the acts or omissions of:

(1) any officer, director, manager, or governing authority of the taxpayer; and

(2) any agent or employee with the actual or apparent authority to prepare information for or submit information to the comptroller.

(b) To avoid imputing the acts or omissions of a person to the taxpayer, the taxpayer may present evidence that the person was engaged in an independent course of conduct that did not further any purpose of the taxpayer.

(c) The comptroller may impose the additional penalty on the taxpayer without regard to whether an officer, manager, director, partner, or other person is personally liable for fraudulent tax evasion under the Tax 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 June 27, 2018.

TRD-201802841
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.3

The Texas Board of Criminal Justice proposes amendments to §163.3, concerning Community Justice Assistance Division Objectives. The amendments are proposed in conjunction with a proposed rule review of §163.3 as published in other sections of the *Texas Register.* The proposed amendments are necessary to make grammatical and formatting updates.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to simplify the rule and make it easier to read and comprehend. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, §509.003.

Cross Reference to Statutes: None.

§163.3. Objectives.

The objectives of the Texas Department of Criminal Justice Community [~~Justice Community~~] Justice Assistance Division (TDCJ CJAD) [~~(TDCJ-CJAD)~~] standards are to:

(1) [~~to~~] make community supervision and corrections available to every judicial district in Texas;

(2) [~~to~~] continue community supervision and corrections as a viable criminal justice sanction;

(3) [~~to~~] assist each community supervision and corrections department (CSCD) [~~Community Supervision and Corrections Department (CSCDs)~~] in providing protection to the community and rehabilitation services for the offender;

(4) [~~to~~] provide technical assistance in the establishment, improvement, and expansion of community-based programs;

(5) [~~to~~] coordinate information and services available from federal, state, and local resources;

(6) [~~to~~] establish minimum uniform community supervision and corrections administration standards;

(7) [~~to~~] establish a statewide statistical information service;

(8) [~~to~~] enhance the professional knowledge and skills of CSCD personnel by providing statewide and regional education and training, and by providing assistance for in-service training with the departments;

(9) [~~to~~] establish an ongoing assessment and evaluation of community supervision and community-based correctional methods and systems; and

(10) [~~to~~] establish regionally based programs serving two or more jurisdictions where such programs address similar offender profiles.

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802908
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: August 12, 2018
For further information, please call: (936) 437-6700

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37 TAC §163.38

The Texas Board of Criminal Justice proposes amendments to §163.38, concerning Sex Offender Supervision. The amendments are proposed in conjunction with a proposed rule review of §163.38 as published in other sections of the *Texas Register.* The proposed amendments are necessary to update formatting, conform the rule to current practice, and to update statutory citations.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to conform the rule to current practice, simplify the rule

making it easier to read and comprehend, and to update statutory citations. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Code of Criminal Procedure Art. 42A & Chapter 62; Texas Government Code §§76.016, 492.013, 509.003; and the Texas Penal Code.

Cross Reference to Statutes: None.

§163.38. Sex Offender Supervision.

(a) Definitions.

(1) Jurisdictional Authority is a sentencing court, the Board of Pardons and Paroles (BPP), or a division of the Texas Department of Criminal Justice [~~(TDCJ)~~] as applicable to the offender.

(2) Sex Crime is a reportable offense under Texas Code of Criminal Procedure Article [~~(TCCP) art.~~] 62.001(5)[~~;~~] or an offense identified as a sexual offense by the Texas Penal Code[~~;~~] laws of the United States, another state, [~~or~~] another country,[~~;~~] or the Uniform Code of Military Justice [~~as a sexual offense~~].

(3) Sex Offender is an offender who:

(A) is [~~Is~~] convicted of committing or adjudicated to have committed a sex crime;

(B) is [~~Is~~] awarded deferred adjudication for a sex crime; or

(C) has [~~Has~~] been ordered by the jurisdictional authority to participate in sex offender supervision or treatment.

(b) A community [~~Community~~] supervision and corrections department [~~departments~~] (CSCD) [~~(CSCDs)~~] supervising sex offenders shall ensure consistency in the manner in which sex offenders are supervised throughout the department. Policies and procedures shall be developed that, at a minimum, include the following:

(1) contact [~~Contact~~] standards as per 37 Texas Administrative Code [~~(TAC)~~] §163.35(c)(5)[~~(7)~~];

(2) sex [~~Sex~~] offender registration as per Texas Code of Criminal Procedure [~~TCCP~~] Chapter 62;

(3) DNA collection as per Texas Code of Criminal Procedure Article 42A.301(b)(21) [~~TCCP art. 42.12, Sec. 11(a)(22)~~];

(4) violation [~~Violation~~] procedures as per 37 Texas Administrative Code [~~TAC~~] §163.35(c)(7)[~~(9)~~];

(5) victim notification [~~Victim services~~] as per Texas Government Code §76.016;

(6) treatment [~~Treatment~~] referral process as per Texas Code of Criminal Procedure Article 42A.453(i) [~~TCCP art. 42.12, Sec. 13B(c)~~];

(7) treatment [~~Treatment~~] participation requirements;

(8) team [~~Team~~] approach to supervision;

(9) sharing [~~Sharing~~] of information and documentation with the appropriate agencies; and

(10) specialized [~~Specialized~~] caseload size, if applicable.

(c) Each CSCD [~~CSCDs~~] shall develop policies and procedures that address the needs and safety of victims or potential victims. The policies may include collaborating with victims, victim advocates, or sexual assault task forces in the supervision and treatment of sex offenders.

(d) Community supervision officers (CSOs) shall use a record keeping system to document all significant actions, decisions, services rendered, and periodic evaluations in each [~~the~~] offender's case file, including the offender's [~~status regarding~~] level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention.

(e) CSOs shall collaborate with collateral sources, including[~~. Collateral sources may include~~] treatment providers, polygraph examiners, significant others, sex offender registration personnel, sex offenders' families, local law enforcement, schools, Child [~~Children's~~] Protective Services [~~(CPS)~~], employers, chaperones, and victim service providers.

(f) CSOs shall recommend that conditions be tailored to the sex offender's identified risk.

(g) CSOs shall make face-to-face[~~,~~] field visits and collateral contacts with the offender, family, community resources, or other persons [~~pursuant to and~~] consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at higher levels of supervision shall receive a higher level of contacts than offenders at lower levels of supervision. Supervision contacts shall be specified in the CSCD [~~CSCDs~~] written policies and procedures.

(h) Each CSCD director [~~directors~~] shall work [~~in conjunction~~] with the local judiciary to specify written policies and procedures wherein CSOs may make recommendations to the courts regarding violations of conditions of community supervision, as well as when violations may be handled administratively. The [~~availability of the~~] continuum of sanctions or alternatives to incarceration shall be considered by the CSO and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(i) CSOs shall timely transmit information regarding supervision and treatment upon transfer of [~~at the time~~] supervision [~~is transferred~~].

(j) In addition to the above, a CSCD [~~CSCDs~~] may operate specialized caseloads for sex offenders. In this event, the CSCD [~~CSCDs~~] shall have a written policy that:

(1) establishes [~~Establishes~~] minimum qualifications and training requirements for CSOs supervising sex offenders; and

[~~(2) Determines the minimum training requirements for CSOs supervising sex offenders; and~~]

(2) [~~(3)~~] specifies [~~Specifies~~] the number of staff required for the increased level of supervision essential for the specialized supervision of sex offenders. The [~~recommended~~] caseload size shall not exceed 60 offenders per caseload [~~CSO to offender ratio is 1 to 45~~].

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

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802910
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: August 12, 2018
For further information, please call: (936) 437-6700

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT
SUBCHAPTER E. PROCEDURES IN CONTESTED CASE

43 TAC §§1.24, 1.25, 1.36

The Texas Department of Transportation (department) proposes amendments to §§1.24, 1.25, and 1.36 concerning the filing and service of documents in contested cases.

EXPLANATION OF PROPOSED AMENDMENTS

This rulemaking concerns the filing of documents with the department in contested cases. Currently, those documents may be filed using the United States mail, an overnight delivery service, hand delivery, or facsimile transmission. This rulemaking replaces facsimile transmission with electronic mail, which is more widely available and generally easier to use.

Amendments to §1.24, Filing of Petition; Procedure for Filing Petition and Other Documents, remove the option of filing documents related to contested cases using facsimile transmission and delete the procedures used for filing by facsimile transmission. Additionally, Subsection (a) is amended to provide that only one copy of a document is required if the document is sent by electronic mail. Amendments to subsection (e) provide the email address and subject line requirements for electronically filing documents in a contested case. Under new subsection (f), when a document is received by the department electronically, it is considered to be filed at the time the header of the email used to transmit the document indicates the email was sent.

Amendments to §1.25, Procedure for Service of Documents, removes the option to serve a document in a contested case using facsimile transmission because the department will no longer accept that type of transmission.

Amendments to §1.36, Proposal for Decision; Filing of Exceptions and Replies, substitute "electronic mail" for "facsimile" delivery to be consistent with other changes made by this rulemaking.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Jeff Graham, General Counsel, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Graham has also determined that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be efficiency and ease of use of the system by persons filing documents in a contested case. There are no anticipated economic costs for persons required to comply with the proposed rules.

There will be no adverse economic effect on small businesses or rural communities, as defined by Government Code, §2006.001 and, therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Graham has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, there is no impact on the growth of state government.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§1.24, 1.25, and 1.36 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Procedures for Filing Contested Case Documents." The deadline for receipt of comments is 5:00 p.m. on August 13, 2018. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides the commission with the authority to establish rules governing procedures in certain contract claims, and Government Code, §2001.004, which requires each agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.112 and Government Code, §2001.004.

§1.24. Filing of Petition; Procedure for Filing Petition and Other Documents.

(a) A person begins a contested case by filing an original and one copy of a petition with the executive director. If the petition is sent by electronic mail, the additional copy of the petition is not required.

(b) Filing a document, including a petition, with the executive director must be made by:

(1) sending the document by United States mail or by overnight delivery service to: Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701;

(2) hand delivering the document to: Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas; or

(3) sending the document by electronic mail in accordance with subsection (e) of this section [except as provided by subsection (e) of this section, faxing the document to: Executive Director, Texas Department of Transportation at (512) 305-9567].

(c) The time and date of the filing of a [the] document, other than an electronically filed document, is determined by the file stamp affixed by the office of the executive director[, except as provided by subsection (e) of this section for a document filed by facsimile transmission].

(d) For a document other than a petition, only an original is required to be filed.

(e) A document sent by electronic mail must be sent to CONTESTEDCASE@txdot.gov with the subject line entry of "Filing of Contested Case Matter."

(f) An electronically filed document received by the department is considered to be filed at the time indicated in the header of the electronic mail containing the document. [This subsection applies only to filings made by facsimile transmission.]

[(1) A document may not be filed by facsimile transmission if the document consists of more than 35 pages.]

[(2) The quality of the document filed by facsimile transmission must be sufficiently clear to transmit legibly.]

[(3) To be an effective filing, the first sheet of facsimile transmission must indicate the number of pages being transmitted and contain a telephone number to call if there are transmission problems.]

[(4) If a document is filed by facsimile transmission, the sender shall maintain the original of the document with the original signature. The sender is not required to file an additional copy of the document by another means.]

[(5) The time and date imprinted by the facsimile machine in the office of the executive director on the accompanying transaction report is the filing time and date, except if a document is received when the office of the executive director is closed, the filing time and date is the beginning of the next business day.]

§1.25. Procedure for Service of Documents.

(a) On the date that a party files a document, other than a petition, with the executive director, the party shall also serve a copy of the document on the judge and each party or the party's authorized representative. If the judge has designated a department employee as a party in the case, the Office of the Attorney General is the employee's authorized representative and service must be made on the Office of the Attorney General rather than the employee.

(b) Service of the document on the judge must be in accordance with SOAH rules. To any person other than the judge, service of the document must be made by:

(1) hand-delivery;

(2) regular, certified, or registered mail;

(3) overnight delivery service; or

(4) [facsimile transmission; or]

[(5)] electronic mail, if the parties have agreed to that manner of service.

(c) A person who files a document must include with the document a certificate of service that certifies compliance with this section.

(d) If a certificate of service is not included with the document, the executive director may:

(1) return the document;

(2) send notice of noncompliance to all parties, stating the document will not be considered until all parties have been served; or

(3) send a copy of the document to the judge and all parties.

§1.36. Proposal for Decision; Filing of Exceptions and Replies.

(a) Proposal for decision. For contested cases in which the judge does not have authority to issue a final decision, the judge shall prepare a proposal for decision.

(b) Submission of the proposal for decision. The judge shall submit the proposal for decision to the executive director and furnish a copy to each party.

(c) Exceptions and replies. A party may submit to the judge an exception to the proposal for decision or a reply to an exception. The party must file a copy of the exception to the proposal for decision or the reply with the executive director, regardless of whether the final order in the case is to be issued by the executive director or the commission.

(1) To be effective:

(A) an exception must be submitted to the judge and filed with the executive director within 15 days after the date that the party receives service of the proposal for decision; and

(B) a reply to an exception must be submitted to the judge and filed with the executive director within 15 days of the date on which the exception is filed.

(2) If the proposal for decision is served by hand delivery or by electronic mail [facsimile], the date of service of the proposal is presumed to be the date of delivery. If the proposal for decision is served by regular mail, interagency mail, certified mail, or registered mail, the date of service of the proposal is presumed to be the third calendar day after the date of the mailing.

(3) The judge may extend or shorten the time to file exceptions or replies.

(4) The parties shall submit to SOAH and file with the executive director any motion for an extension of time to file an exception or reply not later than the fifth day before the applicable deadline for submission of the exception or reply. The motion must show either:

(A) good cause for the requested extension; or

(B) agreement of all other parties to the extension.

(d) Judge's review of exceptions and replies. The judge shall review all exceptions and replies and notify the executive director and parties whether the judge recommends any changes to the proposal for decision.

(e) Judge's authority. The judge may:

(1) amend the proposal for decision in response to exceptions and replies to exceptions; and

(2) correct any clerical errors in the proposal for decision.

(f) Response to amended proposal. A party is not entitled to file an exception or brief in response to an amended proposal for decision.

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

Filed with the Office of the Secretary of State on June 28, 2018.

TRD-201802853

Leonard Reese
Associate General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 463-8630

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CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER P. SHIP CHANNEL IMPROVEMENT REVOLVING LOAN PROGRAM

43 TAC §§15.250 - 15.261

The Texas Department of Transportation (department) proposes new §§15.250 - 15.261, concerning the Ship Channel Improvement Revolving Loan Program.

EXPLANATION OF PROPOSED NEW SECTIONS

Section 4 of Senate Bill 28, 85th Legislature, Regular Session, 2017 (SB 28), amended the Transportation Code by adding Chapter 56, Funding of Ship Channel Improvements, which creates the ship channel improvement revolving fund as an account in the general revenue fund to be administered by the Texas Transportation Commission (commission). Transportation Code, §56.003 requires the commission by rule to establish a revolving loan program to use money from the fund to finance qualified projects for navigation districts. New §§15.250 - 15.261 (Chapter 15, Subchapter P) establish that program.

New §15.250, Purpose; Delegation Authority, describes the purpose of the ship channel improvement revolving fund as defined by law in SB 28. The section also gives the executive director the authority to delegate to a department employee any power or duty assigned to the executive director by Chapter 15, Subchapter P.

New §15.251, Definitions, provides definitions of terms used throughout this subchapter to distinguish between the commission, the department, and the executive director of the department.

New §15.252, Eligible Applicant, identifies an eligible applicant as a navigation district, as defined by Transportation Code, §56.001, or an entity that is authorized to finance a project for a navigation district.

New §15.253, Qualified Project, identifies the types of projects for which the proceeds of a loan from the program may be used. As required by Transportation Code, §56.003, the project must deepen or widen a ship channel and be authorized by the United States Congress; however, that section also provides that a project for maintenance dredging is not a qualified project for the program.

New §15.254, Application Procedures, provides that an application for a loan from the program must be submitted to the executive director in a form prescribed by the department.

New §15.255, Department Action, provides that the department will advise the applicant of any required information or data that is missing and may require additional information or explanations from the applicant. When the application is complete, the executive director will submit findings and recommendations to the commission for consideration.

New §15.256, Commission Action, sets forth the requirements for the commission's minute order approving or disapproving an application, and requiring that the commission include the rationale, findings, and conclusions on which approval or disapproval is based.

New §15.257, Compliance Requirements, requires that an entity that receives a loan comply with applicable state and federal law and maintain its books and records related to the project in accordance with generally accepted accounting principles.

New §15.258, Audits and Reports, requires annual audits and provides for the submission of an annual report detailing project expenditures, providing an accounting of loan proceeds, and providing any other information requested by the department.

New §15.259, Document Retention and Access, requires an entity receiving a loan to retain all work papers and supporting documents for the project for a specified time. All original documents shall be retained and be made available for state or federal audits until the later of the date that the project is completed, all loans have been repaid, or the retention period required by applicable state or federal law ends.

New §15.260, Financial and Credit Requirements, requires an entity receiving a loan to repay the loan in accordance with terms specified by the commission; to submit annual and supplemental operating and capital budgets within 30 days of their adoption; and to submit to the department, for any debt payable from the same revenue that is to repay a loan, notices of material events within 30 days after their submission to Electronic Municipal Market Access System (EMMA) of the Municipal Securities Rulemaking Board, or advise the department in writing that the submission to EMMA has been made.

New §15.261, Delivery of Documents After Project Completion, requires an entity that receives a loan to submit to the department upon project completion all project files and reports as requested by the department.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Benjamin H. Asher, Director, Project Finance, Debt, and Strategic Contracts Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Asher has also determined that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be the department's authority to use money from the ship channel improvement revolving fund to finance qualified projects for navigation districts. There are no anticipated economic costs for persons required to comply with the proposed rules.

There will be no adverse economic effect on small businesses or rural communities, as defined by Government Code, §2006.001 and, therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Asher has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, there is no impact on the growth of state government.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §§15.250 - 15.261 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Ship Channel Improvement Revolving Loan Program." The deadline for receipt of comments is 5:00 p.m. on August 13, 2018. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §56.003, which requires the commission to adopt rules to implement Transportation Code, Chapter 56, relating to the establishment of the ship channel improvement revolving loan program.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 56.

§15.250. Purpose; Delegation Authority.

(a) Transportation Code, Chapter 56, establishes the ship channel improvement revolving fund as an account in the general revenue fund, to be administered by the commission. The Ship Channel Improvement Revolving Loan Program is established to use money from the fund to provide loans for qualified projects as authorized under Transportation Code, Chapter 56.

(b) The executive director may delegate to a department employee any power or duty assigned to the executive director by this subchapter.

§15.251. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Executive director--The executive director of the department.

§15.252. Eligible Applicant.

(a) The department will accept an application under this subchapter only from a navigation district or an entity that is authorized to finance a project for a navigation district.

(b) In this section, "navigation district" has the meaning assigned by Transportation Code, §56.001.

§15.253. Qualified Projects.

(a) To qualify for a loan under this subchapter, a project must:

(1) deepen or widen a ship channel; and

(2) be authorized by the United States Congress.

(b) Under Transportation Code, §56.003(c), a project for maintenance dredging is not a qualified project under this subchapter.

§15.254. Application Procedures.

To apply for a loan under this subchapter, an applicant must submit to the executive director an application in a form prescribed by the department and any other information that may be required by the department.

§15.255. Department Action.

(a) The department will review an application submitted under this subchapter to ensure that sufficient information has been provided to support the eligibility of the applicant and the project, and advise the applicant of any required information or data that is missing.

(b) When the application is complete, the executive director will submit findings and recommendations to the commission for consideration as soon as practicable.

§15.256. Commission Action.

(a) The commission will consider the executive director's findings and recommendations.

(b) The commission may approve an application only if the application is from an eligible applicant for a qualified project as defined in this subchapter.

(c) The commission will approve or disapprove an application under this subchapter by minute order that includes the rationale, findings, and conclusions on which approval or disapproval is based.

(d) Nothing in this subchapter is intended to require the approval of a request made under this subchapter.

§15.257. Compliance Requirements.

(a) An entity that receives a loan under this subchapter shall comply with applicable state and federal law in the performance of work on a project for which proceeds from a loan under this subchapter are used.

(b) The entity shall maintain its books and records related to the project in accordance with generally accepted accounting principles and with all other applicable federal and state requirements.

§15.258. Audits and Reports.

(a) An entity that receives a loan under this subchapter shall have an audit prepared annually by a certified public accountant in accordance with generally accepted auditing standards and with all other applicable federal and state requirements. The entity shall cause the auditor to provide a full copy of the audit report and any other management letters or auditor's comments directly to the department within 30 days after the report and information have been provided to the governing body of the entity.

(b) An entity that receives a loan under this subchapter, on request of the department and at the entity's cost, shall provide to the department:

(1) in a format acceptable to the department, an annual report listing project expenditures, providing an accounting of proceeds of a loan under this subchapter, and providing any other information requested by the department; and

(2) a copy of any report the entity is required to provide to a local, state, or federal agency.

§15.259. Document Retention and Access.

Unless the department in writing provides a shorter period, the entity shall retain and hold open for state or federal audits all original project files, records, accounts, and supporting documents until the later of the date that:

(1) the project is completed;

(2) all loans under this subchapter have been repaid; or

(3) the retention period required by applicable federal and state law ends.

§15.260. Financial and Credit Requirements.

(a) An entity that receives a loan under this subchapter shall repay the loan according to terms specified by the commission.

(b) An entity that receives a loan under this subchapter shall submit to the department the annual operating and capital budgets adopted by the governing body of the entity for each fiscal year that a loan under this subchapter is outstanding and any amended or supplemental operating or capital budget approved by the governing body of the entity. Such a document must be certified as correct by the entity's chief administrative officer or chief financial officer. The entity shall deliver the document to the department within 30 days of the date of its adoption or approval.

(c) For any debt payable from the same revenue source as that used to repay a loan under this subchapter, the entity that receives the loan, within 30 days after the date that the entity submits to the Electronic Municipal Market Access System (EMMA) of the Municipal Securities Rulemaking Board a notice of a material event required to be disclosed under Rule 15c2-12 of the United States Securities and Exchange Commission (17 C.F.R. §240.15c2-12), shall submit to the department a written document that states that the entity has made the submission to EMMA.

§15.261. Delivery of Documents After Project Completion.

An entity that receives a loan under this subchapter, on completion of the project, shall forward to the department all project files and reports as requested by the department.

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

Filed with the Office of the Secretary of State on June 28, 2018.

TRD-201802854
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 463-8630

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER O. CRASH RECORDS INFORMATION SYSTEM

43 TAC §25.977

The Texas Department of Transportation (department) proposes amendments to §25.977, Reporting by Investigating Officers.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments to §25.977(c) implement Section 45 of Senate Bill 312, passed by the 85th Legislature, Regular Session, 2017, which amends Transportation Code §550.062(b) to require web-based filing of crash reports by investigating law enforcement officers. Beginning September 1, 2019, law enforcement officers will be required to file CR-3 Texas Peace Officer Crash Reports using a web-based format, resulting in more accurate and timely receipt of crash reports by TxDOT as the custodian of crash reports and crash data for the state of Texas. The department's Traffic Operations Division is reaching out to agencies that are not currently set up to submit the reports through a web-based format to assist them in ensuring that they will be able to meet the statutory deadline. In addition, the proposed amendments delete §25.977(d) to eliminate reference to Form CR-3 Alternate, the Texas Peace Officer's Alternate Crash Report, which was discontinued as of January 1, 2018.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Michael A. Chacon, Traffic Operations Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Michael A. Chacon, Traffic Operations Division Director, has also determined that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be the more accurate and timely receipt of crash reports by TxDOT as the custodian of crash reports and crash data for the state of Texas. There are no anticipated economic costs for persons required to comply with the proposed rules.

There will be no adverse economic effect on small businesses or rural communities, as defined by Government Code, §2006.001 and, therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Michael A. Chacon, Traffic Operations Division Director, has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, there will be no government growth impact.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §25.977 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Web-based filing of crash reports." The deadline for receipt of comments is 5:00 p.m. on August 13, 2018. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code §550.062(b).

§25.977. Reporting by Investigating Officers.

(a) A law enforcement officer who investigates a motor vehicle crash shall submit a crash record report within 10 days of the accident on a form prescribed by the department if the crash resulted in:

(1) injury to or death of a person;

(2) $1000 or more of property damage to the property of any one person.

(b) The crash record report form must include:

(1) information about the crash;

(2) information about all vehicles involved in the crash;

(3) information about each person involved in the crash; and

(4) other factors necessary for the department to comply with state and federal reporting requirements.

(c) The department has developed Form CR-3, Texas Peace Officer's Crash Report, to satisfy the requirements of subsection (b) of this section. Investigating officers must file Form CR-3 through a web-based format beginning September 1, 2019.

[~~(d) The department also has developed Form CR-3 Alternate, Texas Peace Officer's Alternate Crash Report, to satisfy the requirements of subsection (b) of this section and provide an alternate format that the investigating officer or the officer's law enforcement agency may choose for reporting the required information.~~]

(d) [~~(e)~~] The forms are available through the department's website at www.txdot.gov.

(e) [~~(f)~~] Incomplete or inaccurate crash reports, with the exception of location information as described in §25.974(b) of this subchapter (relating to Officer Accident Report Modifications), will be returned to the originating law enforcement agency for correction.

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

Filed with the Office of the Secretary of State on June 28, 2018.

TRD-201802855
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 12, 2018
For further information, please call: (512) 463-8630

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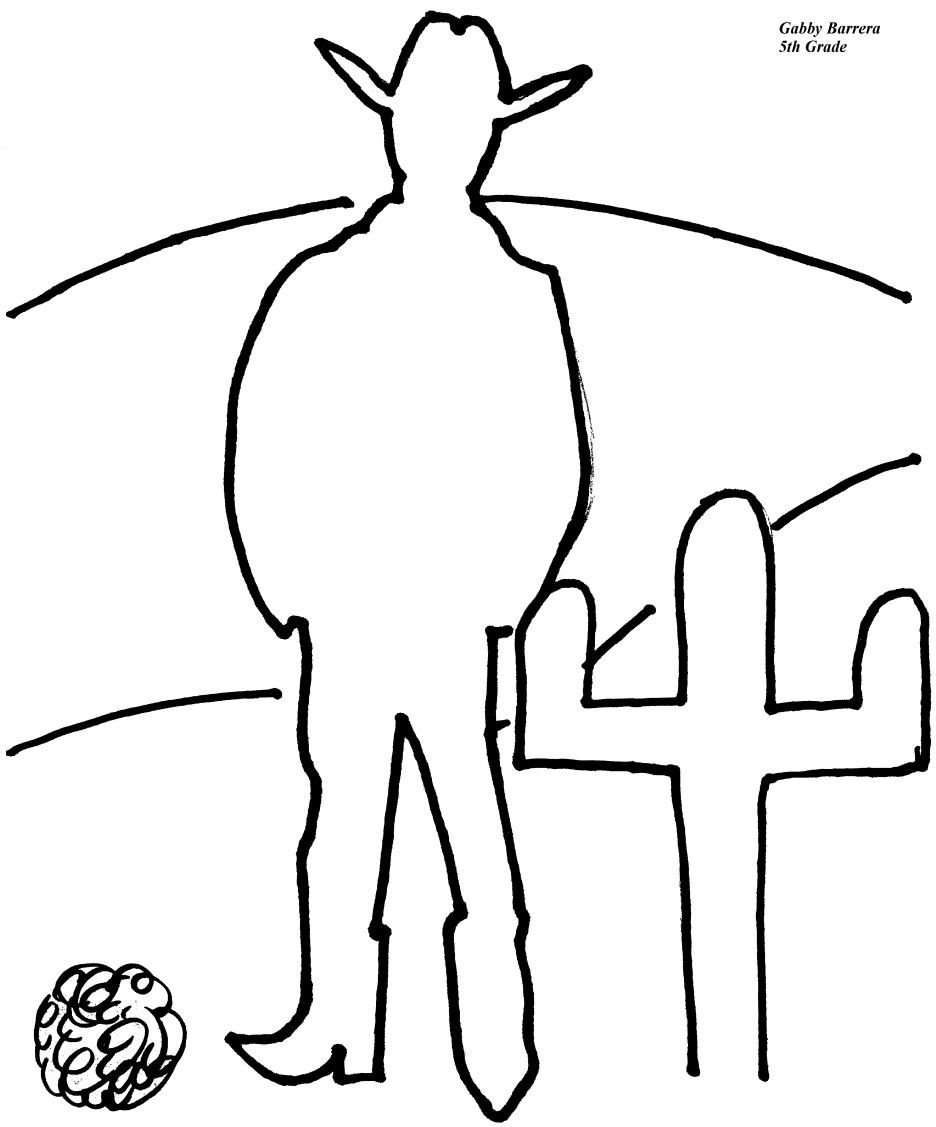
Gabby Barrera
5th Grade



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 27. TEXAS CITRUS PEST AND DISEASE MANAGEMENT CORPORATION

SUBCHAPTER B. ELECTION OR REFERENDUM PROCEDURES

4 TAC §27.202

The Texas Department of Agriculture (Department) adopts amendments to Title 4, Part 1, Chapter 27, Subchapter B, §27.202, relating to Board Candidates. The amendments, which allow staggered terms and clarify term limits, are adopted without changes to the proposal in the May 25, 2018, issue of the *Texas Register* (43 TexReg 3294).

No comments were received on the proposal.

The amendment is adopted under Chapter 80 of the Texas Agriculture Code, which authorizes the Department to adopt rules as necessary for the Texas Citrus Pest and Disease Management Corporation to plan, carry out, and operate suppression programs to manage and control pests and diseases in citrus plants in the state under the supervision of the Department as provided by Chapter 80.

The code affected by the adoption is Texas Agriculture Code, Chapter 80.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802942
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: July 22, 2018
Proposal publication date: May 25, 2018
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 7. HOMELESSNESS PROGRAMS

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 7, Subchapter A, §§7.1 - 7.14, General Provisions, and Subchapter B, Homeless Housing and Services Program, Subchapter B, §§7.1001 - 7.1005, without changes to the proposed text as published in the May 11, 2018, *Texas Register* (43 TexReg 2882) and will not be republished. The purpose of the repealed rule is to clarify general requirements and to align with new rules for the Homeless Housing and Services Program being adopted under a separate rulemaking action.

REASONED JUSTIFICATION: The Department finds that the adoption of the repeal is necessary to clarify general requirements for the Emergency Solutions Grants Program and Homeless Housing and Services Program, and to add the Ending Homelessness to the basic framework for administration, and to clarify specific requirements for the Homeless Housing and Services Program.

The TDHCA Governing Board approved the final order adopting the repealed rule on June 28, 2018.

SUMMARY OF PUBLIC COMMENTS. The public comment period for the repealed rule was held between May 11, 2018, and June 11, 2018. No public comment was received.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§7.1 - 7.14

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802913
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 22, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 475-3975

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SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §§7.1001- 7.1005

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802914
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 22, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 475-3975

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §§7.1 - 7.11

The Texas Department of Housing and Community Affairs (the "Department') adopts the new 10 TAC, Chapter 7, Subchapter A, §§7.1 - 7.11, concerning General Provisions, with changes to the text in §7.4 and §7.11 as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2883). Section 7.4 and §7.11 will be republished. No changes were made to §§7.1 - 7.3 and §§7.5 - 7.10, which will not be republished.

The purpose of the adopted new sections is to restructure the program rules to improve compliance with federal and state requirements, and to provide for consistency with other provisions of the Department's rules.

REASONED JUSTIFICATION. The Department finds that the adoption of new 10 TAC §§7.1 - 7.11 is necessary to clarify general requirements for the Emergency Solutions Grants Program and Homeless Housing and Services Program, and to add the Ending Homelessness to the basic framework for administration.

SUMMARY OF PUBLIC COMMENTS. The public comment period for the adopted rule was held between May 11, 2018, and June 11, 2018. No public comment was received.

The TDHCA Governing Board approved the final order adopting the new rule on June 28, 2018.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the adopted sections affect no other code, article, or statute.

§7.4. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the Contract, as allowed by state and federal laws and rules.

(b) The Subrecipient may subcontract for the delivery of client assistance without obtaining Department's prior approval, but must obtain the Department's written permission before subgranting federal funds.

(c) The Subrecipient is responsible for ensuring that the performance rendered under all subcontracts, subgrants and other agreements are rendered so as to comply with Homeless Program requirements, as if such performance rendered were rendered by the Subrecipient. Department maintains the right to monitor and require the Subrecipient's full compliance with the terms of the Subrecipient Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Contract System.

(e) Amendments and Extensions to Contracts.

(1) Except for amendments that only move funds within budget categories, the Department reserves the right to deny amendment requests if any of the following conditions exist:

(A) the request for an amendment was received in writing less than thirty (30) calendar days from the end of the Contract Term;

(B) if the award for the Contract was competitively awarded and the amendment would materially change the scope of the Contract performance or affected the score;

(C) if the funds associated with the Contract will reach their federal or state expiration date within forty-five (45) calendar days of the request;

(D) if the Subrecipient is delinquent in the submission of their Single Audit or their Single Audit Certification form required by §1.403 in Chapter 1 of this Title;

(E) if the Subrecipient owes the Department disallowed amounts in excess of $1,000 and a Department-approved repayment plan is not in place or has been violated;

(F) for amendments adding funds (not applicable to amendments for extending time), if the Department has cited the Subrecipient for violations within §7.11 of this Subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(G) the Contract has expired; or

(H) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Denial of an amendment may be subject to §1.7 of this Title, regarding appeals.

(f) The Department reserves the right to use a Cost Reimbursement method of payment whereby reimbursement of costs incurred by a Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs for all funds if at any time the following apply:

(1) The Department determines that the Subrecipient has maintained cash balances in excess of need;

(2) The Department identifies significant deficiency in the cash controls or financial management system used by the Subrecipient; or

(3) The Subrecipient fails to comply with the reporting requirements in §7.5 and §7.6 of this Subchapter.

(g) Voluntary deobligation. The Subrecipient may fully relinquish funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Subrecipient may partially relinquish funds under a Contract in the form of a written request from

the signatory if the partial relinquishment in performance measures and budget would not have impacted the award of the Contract. Voluntary relinquishment of a Contract does not limit a Subrecipient's ability to participate in future funding.

(h) Funds provided under a Contract may not be used for sectarian or explicitly religious activities such as worship, religious instruction or proselytization, and must be for the benefit of persons regardless of religious affiliation.

§7.11. Compliance Monitoring.

(a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 7.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 7 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has Contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of the programs under this Chapter.

(3) Any entity administering any or all of the programs provided for in subsection (a)(2) of this section as part of a Memorandum of Understanding ("MOU"), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification and Information Collection.

(1) In general, the Subrecipient or Subgrantee will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide the Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's Contract contact at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a thirty (30) day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipients to provide to the Department the current contact information for the organization and the Board in accordance with §7.7 of this Subchapter (relating to Subrecipient Contact Information) and §1.22 of this Title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipients or Subgrantees must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable client files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Client files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, HUD requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD LEP requirements, and requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(c) Post Monitoring Procedures.

(1) In general, within thirty (30) calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Subrecipient's designated Contract contact, as applicable. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided thirty (30) calendar days, from the date of the email, to respond, which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that justifies the extension.

(3) Monitoring Close Out. Within forty-five (45) calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient's response satisfies all Findings and Concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. If the Subrecipient's response does not correct all findings noted, the follow-up letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7, regarding appeals in Chapter 1 of this Title.

(C) The Subrecipient may request Alternative Dispute Resolution ("ADR"). The Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to Chapter 1, Subchapter A of this title.

(5) If the Subrecipient does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this Title, relating to Enforcement.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802911
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 22, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 475-3975

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SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §§7.21 - 7.29

The Texas Department of Housing and Community Affairs (the "Department") adopts the new 10 TAC Chapter 7, Subchapter B, §§7.21 - 7.29, concerning Homeless Housing and Services Program, with no changes to text as published in the May 11, 2018, issue of the *Texas Register* (42 TexReg 2891). The purpose of the adopted new sections is to restructure the program rules to improve compliance with federal and state requirements, and to provide for consistency with other provisions of the Department's rules.

REASONED JUSTIFICATION: The Department finds that the adopted new rule is necessary to clarify specific requirements for the Homeless Housing and Services Program.

SUMMARY OF PUBLIC COMMENTS. The public comment period for the adopted new rule was held between May 11, 2018, and June 11, 2018. Written comments were accepted by mail, email, and facsimile. The Department received one comment from one source: Natalie Evans.

§7.23. Allocation of Funds and Formula.

COMMENT SUMMARY: Commenter supports the provision utilizing the American Community Survey 1 Year Estimates to determine population for the purposes of municipal eligibility.

STAFF RESPONSE: Staff agrees with the comment. No changes have been made to the rule in response to this comment.

The TDHCA Governing Board approved the final order adopting the new rule on June 28, 2018.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
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For further information, please call: (512) 475-3975

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §23.61

The Texas Department of Housing and Community Affairs (the "Department") adopts the amendments to 10 TAC Chapter 23, Subchapter F, §23.61, concerning Tenant-Based Rental Assistance (TBRA) General Requirements, without changes, as published in the May 11, 2018, *Texas Register* (43 TexReg 2896) and will not be republished.

REASONED JUSTIFICATION: The purpose of amending the State HOME Investment Partnerships Program ("HOME") Rule under Subchapter F is two-fold. First is to remove requirements that are duplicative of requirements stated in the federal regulations governing the HOME Program, and second is to provide flexibility to Administrators of HOME TBRA funds as they relate to Administrative costs. Secondly, the amended section related to administrative costs will allow Administrators of HOME Program funds to have the option of selecting one of two methods of receiving administrative costs and soft costs for expenses related to provision of TBRA activities. Administrators will have the option to request reimbursement for Administrative costs equal to 4 percent of Direct Activity costs, excluding Match funds, and up to $1,200 per activity in project soft costs; or reimbursement of Administrative costs equal to 8 percent of Direct Activity costs, excluding Match funds. In either case, Administrators may request reimbursement for Administrative funds up to an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs.

The Department accepted public comment between May 11, 2018, and June 11, 2018. No comments were received concerning the amendment.

The Board approved the final order adopting the amendments on June 28, 2018.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The adopted amendments affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2018.

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Timothy K. Irvine
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For further information, please call: (512) 475-0908

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING ENGLISH LANGUAGE LEARNERS

The Texas Education Agency (TEA) adopts amendments to §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1225, 89.1227, 89.1228, 89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, and 89.1265; new 89.1226 and 89.1229; and the repeal of 89.1267 and 89.1269, concerning the state plan for educating English learners. The amendments to §§89.1201, 89.1203, 89.1207, 89.1210, 89.1220, 89.1228, 89.1235, 89.1245, and 89.1265 and new 89.1229 are adopted with changes to the proposed text as published in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2338). The amendments to §§89.1205, 89.1215, 89.1225, 89.1227, 89.1230, 89.1233, 89.1240, and 89.1250; new 89.1226; and the repeal of 89.1267 and 89.1269 are adopted without changes to the proposed text as published in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2338) and will not be republished. The adopted revisions amend and clarify provisions relating to identifying, placing, serving, and reclassifying English learners to align the rules with current agency practice and make modifications to align with the adopted Every Student Succeeds Act (ESSA) State Plan, Title III, Part A.

REASONED JUSTIFICATION. In accordance with the Texas Education Code (TEC), Chapter 29, Subchapter B, Bilingual Education and Special Language Programs, the commissioner exercised rulemaking authority to establish rules to guide the implementation of bilingual education and special language programs. The commissioner's rules in 19 TAC Chapter 89, Subchapter BB, establish the policy that every student in the state who has a primary language other than English and who is identified as an English learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program. These rules outline the requirements of the bilingual education and ESL programs, including program content and design, home language survey, the language proficiency assessment committee (LPAC), testing and classification, facilities, parental authority and responsibility, staffing and staff development, required summer school programs, and evaluation.

During the recent statutorily required review of rules in 19 TAC Chapter 89, staff identified the need to update rules in Subchapter BB to align with current agency practice. In addition, the issuance of the adopted ESSA State Plan, Title III, Part A, necessitated conforming changes to §89.1225 and the addition of new §89.1226.

The adopted revisions to 19 TAC Chapter 89, Subchapter BB, update the term "English language learner" to "English learner" and the term "home language" to "primary language" throughout the rules. In addition, the following changes were made.

Section 89.1201, Policy, was amended to update terminology and align language with the required curriculum standards for bilingual education and ESL programs. In response to public comment, the section was modified at adoption to add the word "appropriately" throughout to clarify that teachers must be appropriately certified.

Section 89.1203, Definitions, was amended to define terms used in Chapter 89, Subchapter BB, and align them with statute. Definitions were added for bilingual education allotment, certified English as a second language teacher, dual-language instruction, English as a second language program, English language proficiency standards, exit, and reclassification. In response to public comment, paragraph (7) was modified at adoption to clarify use of the term "limited English proficient (LEP) student."

Section 89.1205, Required Bilingual Education and English as a Second Language Programs, was amended to update terminology and clarify that school districts seeking to implement bilingual education program models that are not required under statute have the authority to do so.

Section 89.1207, Exceptions and Waivers, was amended to update terminology and codify filing and reporting procedures to align with current agency practices. The elements of a comprehensive professional development plan were added to provide guidance that would ensure consistent and comprehensive training statewide. In addition, a requirement was added that schools maintain records to support the submission of an exception or waiver. This ensures schools have the appropriate documentation to present information to the school board as required by §89.1265. The section title was also amended to add clarity. In response to public comment, the section was modified at adoption to add the word "appropriately" throughout to clarify that teachers must be appropriately certified.

Section 89.1210, Program Content and Design, was amended to update terminology and add clarity to the descriptions of the various bilingual education and ESL program models. In response to public comment, the section was modified at adoption as follows. The word "appropriately" was added throughout to clarify that teachers must be appropriately certified. Language was

also added in subsection (c)(3) and (4) to specify that instruction provided in a language other than English in the dual language immersion/one-way and dual language immersion/two-way program models is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. Instruction provided in English in the program models may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. In addition, subsection (d)(1) was amended to clarify specific teacher certification requirements for educators serving in the ESL/content-based program model.

Section 89.1215, Home Language Survey, was amended to update terminology and provide guidance on responsibilities regarding the survey. A requirement was added to provide the survey in Vietnamese to reflect that it is the state's second most represented primary language. In addition, language was amended to clarify that the home language survey should be given only to students enrolling in a Texas public school for the first time and to require the receiving district to make multiple attempts to obtain the survey from the sending district for a student who has been enrolled previously in a Texas public school. These changes ensure continuity of program services for students and avoid services potentially being interrupted or altered.

Section 89.1220, Language Proficiency Assessment Committee, was amended to update terminology and clarify the member composition of the LPAC as well as student monitoring requirements to align with requirements in statute. Additional changes clarify parent notification and parent approval procedures and adjust timeline language to align with ESSA and state statutory requirements. In response to public comment, the section was modified at adoption to add the word "appropriately" throughout to clarify that teachers must be appropriately certified. Also in response to public comment, subsection (h) was amended to clarify that the 10-day notification requirement is 10 calendar days.

Section 89.1225, Testing and Classification of Students, was amended to update terminology and align with new ESSA requirements for the 2018-2019 school year, including a student assessment and identification timeline of four weeks, use of a standardized rubric for providing subjective teacher evaluation for student exit purposes, and additional clarification of testing requirements for program entry and exit. Additionally, clarification was provided with regard to the role of the LPAC and the admission, review, and dismissal (ARD) committee and procedures to be followed in the decision-making process for English learners with identified special needs. Language was amended to align with new annual language proficiency testing procedures made allowable through ESSA for English learners with significant cognitive disabilities. This section will be superseded by §89.1226 beginning with the 2019-2020 school year.

Adopted new §89.1226, Testing and Classification of Students, Beginning with School Year 2019-2020, was added to align with new ESSA requirements to be implemented beginning with the 2019-2020 school year. New standardized procedures were introduced, including the state's use of a single English language proficiency test for student identification and entrance and a single English language proficiency test for student exit. Additionally, updated language from §89.1225 was included in this section where appropriate.

Section 89.1227, Minimum Requirements for Dual Language Immersion Program Model, was amended to include language regarding provision of equitable resources to ensure that program model participants are consistently given equitable access to the state curriculum.

Section 89.1228, Dual Language Immersion Program Model Implementation, was amended to update terminology and clarify parent permission requirements. The section title was amended to clarify the specific program model addressed in this section. In response to public comment, subsection (a) was modified at adoption to add reference to §89.1233(a).

Adopted new §89.1229, General Standards for Recognition of Dual Language Immersion Program Models, was added. The new section contains language from repealed §89.1265, General Standards for Recognition of Dual Language Immersion Program Models, and was moved to more logically organize the rules. Differences from the repealed rule include clearly delineated criteria for recognizing dual language immersion program implementation and new language about recognition of student performance as required in TEC, §28.0051. In response to public comment, subsection (b) was modified at adoption to specify that a student participating in any state-approved bilingual or ESL program model may earn a performance acknowledgement in accordance with 19 TAC §74.14.

Section 89.1230, Eligible Students with Disabilities, was amended to update terminology and clarify the role and responsibilities of the LPAC in decision-making for English learners with disabilities.

Section 89.1233, Participation of English Proficient Students, was amended to update terminology and clarify participation enrollment limitations in accordance with statute.

Section 89.1235, Facilities, was amended to update terminology and provide flexibility for how school districts continue services for students who have attended a newcomer center for the allowed two years. Information regarding percentage of enrolled English learners per facility was amended and moved to §89.1233 to align with statute. In response to public comment, the section was modified at adoption to clarify that recent immigrant English learners shall not remain enrolled in a newcomer center for longer than two years.

Section 89.1240, Parental Authority and Responsibility, was amended to update terminology and clarify requirements to be included in the bilingual education allotment.

Section 89.1245, Staffing and Staff Development, was amended to update terminology. To streamline and eliminate redundancy, language describing requirements for school districts filing for a bilingual exception or ESL waiver was deleted and language describing materials provision was combined. In response to public comment, subsection (a) was modified at adoption to address teaching permits for school districts that are unable to secure a sufficient number of appropriately certified bilingual education and/or ESL teachers to provide the required programs.

Section 89.1250, Required Summer School Programs, was amended to update terminology and clarify allowable funding sources. The state's bilingual education allotment provides funds for this state-mandated program.

Section 89.1265, Evaluation, was amended to update terminology and clarify annual evaluation requirements aligned with statute and incorporate requirements currently described in §89.1267. Additional evaluation reporting requirements were provided for school districts filing for a bilingual exception and/or an ESL waiver to align with adopted amendments to §89.1207. In response to public comment, subsection (b)(4) was modified

at adoption to clarify the type of professional development that must be provided to teachers and aides and included in the annual school district reports of educational performance.

Section 89.1267, Standards for Evaluation of Dual Language Immersion Program Models, was repealed to eliminate redundancy, as these requirements are already fulfilled in §89.1265.

Section 89.1269, General Standards for Recognition of Dual Language Immersion Program Models, was repealed and adopted as new §89.1229 to more logically organize the rules.

In addition, the subchapter title was changed to "Commissioner's Rules Concerning State Plan for Educating English Learners."

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began April 20, 2018, and ended May 21, 2018, and included a public hearing on May 2, 2018. Following is a summary of the public comments received and corresponding agency responses.

Comment. Three administrators stated that it is unclear in proposed §89.1210(c)(3) and (4) that a teacher certified in ESL serving in a dual language program model can teach subjects that are in English.

Agency Response. The agency agrees that additional clarification is necessary. In response to this and other comments, §89.1210(c)(3) and (4) was modified at adoption to read, "Instruction provided in a language other than English in this program model is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. Instruction provided in English in this program model may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061."

Comment. One administrator stated that it is unclear in proposed §89.1210(c)(3) and (4) whether the teacher of record is the bilingual-certified teacher or the ESL-certified teacher in instances where the two are teaching as a pair in a dual language program model.

Agency Response. The agency provides the following clarification. Assignment of a teacher of record in a dual language program model that uses paired teachers to deliver the components of the program in English and another language is a local district decision.

Comment. One administrator inquired whether the language in §89.1210(c)(3) and (4) that lists the anticipated number of years by which program participants will likely meet reclassification criteria is meant to be interpreted that students who meet reclassification criteria prior to the anticipated number of years may not be reclassified.

Agency Response. The agency provides the following clarification. English learners will be reclassified as English proficient following the standardized procedures in accordance with §89.1225(i), (l), and (m) and §89.1226(i), (l), and (m), regardless of the English learner program through which they are served. The anticipated number of years by which program participants will likely meet reclassification criteria is provided in the program model descriptions as a general guide but shall not supersede standardized statewide exit procedures required under TEC, §29.056(g).

Comment. One administrator asked whether the requirement in §89.1215(b) that the home language survey be administered in English, Spanish, and Vietnamese means that all three languages need to be on one form or whether a district can pair English with each of the two languages on separate forms. The administrator also inquired whether the home language survey in Vietnamese may be provided to families on paper when a district is generally using an electronic enrollment system.

Agency Response. The agency provides the following clarification. The specific manner by which the home language survey is administered (electronic or paper-based, language combinations) is a local district decision. The agency provides suggestions on best practices in administering the home language survey in guidance provided through annual LPAC Framework training and posted on the TEA website at https://tea.texas.gov/bilingual/esl/education/.

Comment. One administrator asked whether the language in §89.1220(b) and (c) identifying the three required members of the LPAC means that a bilingual-certified teacher meets the requirement for instances in which the LPAC is meeting to make decisions around an English learner served through a bilingual education program and that an ESL-certified teacher meets the requirements for instances in which the LPAC is meeting to make decisions around an English learner served through an ESL program.

Agency Response. The agency provides the following clarification. The administrator's interpretation of the intended meaning of this rule is accurate.

Comment. Two administrators requested that special entry criteria be created for English learners with disabilities and recommended changes be made to §89.1225(h) to allow LPAC in conjunction with ARD committees the discretion to identify a student as "Not English Learner" or "Undetermined" if the student's language proficiency is not the critical factor for that student and/or a bilingual or ESL program placement would not be beneficial to that student. One of the commenters expressed concern that under current proposed rule, students with severe disabilities are identified as English learners but have no subsequent opportunity to exit English learner status.

Agency Response. The agency disagrees and has maintained language as proposed. Federal requirements require all students to be treated in the same manner in regard to English learner status. However, if federal law were amended to permit such a change, the agency would consider the commenters' suggestion in future rulemaking.

Comment. One administrator asked whether a student indicating American sign language as a response on the home language survey needs to be identified as an English learner.

Agency Response. The agency provides the following clarification. American Sign Language is considered a language other than English, and the standardized process for English learner identification applies in accordance with §89.1215(c).

Comment. One administrator, regarding the commissioner of education's ability to review the state's list of approved tests annually under §89.1225(o), expressed concern that changing the test every year or even every three years would be too costly to districts.

Agency Response. The agency disagrees and has maintained language as proposed. State law authorizes the commissioner the opportunity for annual approval.

Comment. One administrator sought clarification regarding the assessment requirements for reclassification outlined in §89.1226(i)(1).

Agency Response. The agency provides the following clarification. Beginning in the 2019-2020 school year, English learners will need to achieve scores of advanced high on all four Texas English Language Proficiency Assessment System (TELPAS) domains (reading, writing, listening, speaking), achieve success on state reading assessments or perform at the 40th percentile or above on the state-approved norm-referenced reading achievement test at Grades 1, 2, 11, and 12, and earn a satisfactory rating on the state's student exit rubric.

Comment. Two administrators asked for clarification on §89.1210(d)(1) and (2) regarding the certification requirements for teachers serving English learners through an ESL program in which two different teachers are assigned to deliver language arts and reading instruction, such as a reading teacher and a separate language arts teacher.

Agency Response. The agency provides the following clarification. When implementing an ESL program model, and the English language arts and reading (ELAR) Texas Essential Knowledge and Skills (TEKS) are divided between two teachers, an English language arts (ELA) teacher and a reading teacher, ESL certification is required for both the ELA teacher and the reading teacher.

Comment. Three administrators asked for clarification on §89.1210(d)(1) regarding the specific certification requirements for teachers serving in a content-based ESL program model and wanted to know whether the same ESL certification requirements applied at middle school and high school.

Agency Response. The agency provides the following clarification. When implementing a content-based ESL program model, all four content teachers, or an appropriately certified generalist, must be certified in ESL. This applies at all grade levels, including middle school and high school.

Comment. One administrator requested an explanation for the rationale for changes in ESL certification requirements in §89.1210.

Agency Response. The agency provides the following explanation. The changes in certification requirements for educators serving English learners through ESL pull-out or content-based ESL program models were made to ensure alignment with TEC, §29.066.

Comment. One administrator suggested revising the language to clarify specific teacher certification requirements for educators serving in the content-based ESL program model.

Agency Response. The agency agrees that additional clarification is necessary. In response to this and other comments, §89.1210(d)(1) has been modified at adoption to read, "An ESL/content-based program model is an English acquisition program that serves students identified as English learners through English instruction by a teacher certified in ESL under TEC, §29.061(c), through English language arts and reading, mathematics, science, and social studies."

Comment. Four administrators expressed concern that the revised program model descriptions put forth in §89.1210 may result in an increase in the number of applications districts submit for ESL waivers.

Agency Response. The agency agrees that some, but not all, school districts will be impacted. In some instances, school districts may need to apply for ESL waivers while they adjust to comply with new rules. Other districts may need to change how they code their program model in TSDS PEIMS from content-based ESL to ESL pull-out to avoid applying for additional ESL waivers. The agency has determined that this temporary situation will be remedied once districts have time to ensure staff are appropriately certified.

Comment. One administrator stated that Response to Intervention (RTI) for students served through bilingual education programs is not mentioned in rule text and asked for clarification on appropriate delivery of RTI services for English learners.

Agency Response. The agency provides the following clarification. Information on effective implementation of RTI for students served through bilingual education programs is provided by the agency through guidance posted on the TEA website at https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/Response_to_Intervention/.

Comment. One administrator expressed concern over the mismatch between the four-week requirement set for identifying English learners and the lengthier allowable time period permitted for identifying students with special needs and the impact that these mismatched timelines may have on student identification, placement, and services.

Agency Response. The agency agrees that state law is incongruent with regard to identification timelines between program areas but has maintained language as proposed in accordance with TEC, §29.056.

Comment. Two administrators requested clarification on how "10th day" is defined under §89.1220(h).

Agency Response. The agency agrees that additional clarification is necessary. In response to this comment, §89.1220(h) has been modified at adoption to read, "...not later than the 10th calendar day after the date of the student's classification...."

Comment. Two administrators asked whether language describing monitoring requirements in §89.1220(k) should be changed from "in the first two years" to "the first four years after reclassification" to ensure alignment with the new monitoring requirements under ESSA.

Agency Response. The agency provides the following clarification. The ESSA requirement to track academic progress of English learners for the first four years after their reclassification is for federal accountability purposes only and is separate from the state's two-year monitoring requirement in accordance with TEC, §29.056.

Comment. Two administrators asked whether the TEA would ever consider selecting an instrument for identifying English learners that includes all four language domains (reading, writing, listening, speaking) so as to require the administration of only one instrument.

Agency Response. The agency provides the following clarification. In accordance with new ESSA requirements, a single assessment instrument that assesses all four language domains (reading, writing, listening, speaking) will be used to identify English learners beginning in the 2019-2020 school year in accordance with §89.1226.

Comment. Two administrators sought clarification of §89.1225(k) regarding the statement that English learners may not be exited from program services if the LPAC has recommended designated supports on the state reading or writing

instrument, pointing out that only certain designated supports could keep students from exiting.

Agency Response. The agency provides the following clarification. While it is accurate that not all designated supports on state assessments would prevent an English learner from being reclassified as English proficient, this rule only applies to designated supports that are "recommended by the LPAC." Specific names and categories of designated supports, as determined by the TEA Student Assessment Division, may change over time, so TEA uses a general term in rule text to ensure alignment over time. The agency has maintained language as proposed.

Comment. One administrator asked for clarification regarding the timing of the administration of the home language survey by the receiving district of a transfer student for students previously enrolled in a public school in Texas, as described in §89.1215(d), and expressed the desire for the receiving district to have the authority to administer a new home language survey for the incoming student on the day of enrollment in order to begin the identification process immediately so that the child can be placed with the appropriate teacher as soon as possible.

Agency Response. The agency provides the following clarification. State law requires that a home language survey be administered upon a student's initial enrollment in a Texas school in accordance with TEC, §29.056. School districts receiving a transfer student coming from another Texas school shall document due diligence in attempting to locate that student's original home language survey to avoid duplicated efforts and the possibility of misidentification of English learners. If the receiving district is unable to obtain the original home language survey after multiple documented attempts, the district may administer a new home language survey while continuing its attempts. TEC, §29.056(a)(1), requires that students be identified as English learners within four weeks of enrollment, not within four weeks of completion of the home language survey, so in cases where the receiving district has failed to obtain the original home language survey from the sending district and must administer a new home language survey, the four-week timeframe still began on the child's school enrollment date, not the date when the new home language survey was administered. The agency has maintained language as proposed.

Comment. One member of the State Board of Education (SBOE) asked for clarification regarding the change from the use of English language learners to the use of English learners.

Agency Response. The agency provides the following clarification. The change in terms is to be in alignment with the language used in ESSA.

Comment. One member of the SBOE asked for clarification regarding the reference to timelines for being prepared for English-only instruction in dual language/one-way and dual language/two-way program models and its impact on A-F accountability ratings and its alignment with the policy that state assessments be made available in English only after the elementary grades.

Agency Response. The agency provides the following clarification. Regarding the impact of language of assessment on A-F accountability ratings, there is no discernible negative impact. English learners served through a dual language program model receive instruction in both English and another language with a goal of attaining full proficiency in both languages. Therefore, participating in state assessments administered in English at the secondary level is aligned with the program model goals.

Comment. One member of the SBOE stated that dual language program models are additive bilingual education models and that transitional bilingual education program models are subtractive and identified dual language goals as bilingualism/biliteracy, academic achievement, and cultural competence.

Agency Response. The agency provides the following clarification. These statements regarding characteristics of various bilingual program models go beyond the scope of basic program descriptions and will be addressed in guidance that is currently under development and will be posted on the TEA website at https://tea.texas.gov/bilingual/esl/education/.

Comment. One member of the SBOE stated that a student does not exit a dual language education model but rather exits language proficiency status.

Agency Response. The agency provides the following clarification. When an English learner demonstrates English proficiency through meeting established criteria, in accordance with TEC, §29.056(3)(g), that child is reclassified as English proficient. The term "reclassification" is used to make clear that reclassification does not necessarily equate with cessation of participation in ("exit from") program services.

Comment. One member of the SBOE stated that the only difference between a dual language one-way program model and a dual language two-way program model is student composition and that everything else is the same.

Agency Response. The agency provides the following clarification. For the purposes of providing basic program definitions, it is accurate to state that the main difference between a one-way and a two-way dual language program model is student composition. Differences in program implementation, which would include differences in approaches to instruction, strategies for family involvement, and others, exist between the two program models but go beyond the scope of a basic program model description.

Comment. One member of the SBOE recommended inclusion of information on research-based biliteracy, to include simultaneous and successive biliteracy, as well as a requirement of assessments to be administered in both program languages to all program participants.

Agency Response. The agency provides the following clarification. The recommended information goes beyond the scope of basic program descriptions and will be addressed in guidance that is currently under development and will be posted on the TEA website at https://tea.texas.gov/bilingual/esl/education/.

Comment. One administrator asked whether students who meet reclassification criteria earlier than the sixth year of dual language program participation, in accordance with §89.1210(c)(3), would be reclassified and exited out of the program completely or if they would be reclassified but permitted to continue to participate in the program without generating funds.

Agency Response. The agency provides the following clarification. A student being served through a dual language program model reclassifies at the end of the year in which the child meets all reclassification criteria, in accordance with TEC, §29.056(3)(g), but shall continue participating in the program without generating funds. This is because the dual language program model is specifically designed with the goal of its participants being bilingual and biliterate through prolonged program participation, so reclassification does not equate with program exit.

Comment. One administrator noted the striking of language calling for an even balance of English speakers and English learners, whenever possible, in dual language/two-way classrooms at the beginning of the program and the application of statute limiting participation of fluent English speakers to no more than 40% of total program participants. The administrator asked for clarification as to whether districts will have autonomy in balancing student numbers in dual language/two-way classrooms and whether the 40% limit applies at the classroom or districtwide level.

Agency Response. The agency provides the following clarification. School districts have the autonomy to determine the specific makeup of individual dual language/two-way classrooms regarding the balance of English proficient students and English learners. The requirement that no more than 40% of program participants be English proficient applies districtwide and not at the classroom level.

Comment. One administrator recommended that the teacher certification requirements be loosened to allow for any content teacher serving the English learner to suffice as the ESL-certified teacher in the ESL/pull-out model to avoid an increase in the number of ESL waivers.

Agency Response. The agency disagrees and has maintained language as proposed in accordance with TEC, §29.066(b)(2).

Comment. One administrator expressed concern that defining the dual language/one-way program model in terms of a requirement that at least half of the instruction be delivered in the student's primary language for the duration of the program takes away district flexibility to offer a program with time allotments that best meet the needs of the student. The administrator also asserted that there is confusion in the field due to the fact that TEC, Chapter 29, does not provide a specific time allotment for language instruction to be delivered in the students' primary language.

Agency Response. The agency provides the following clarification. The requirement that instruction in the non-English program language not fall below 50% of the total instructional time for the duration of the program is a basic tenet of dual language program models identified in research (Thomas, W.P, and Collier, V.P. (2012). Dual language education for a transformed world. Albuquerque, NM: Fuente Press). For school districts seeking flexibility to offer a program with time allotments for primary language instruction diminishing as students acquire English, they have the autonomy to provide bilingual education services through one of the two transitional bilingual education models. As is generally the case, TEC, Chapter 29, Subchapter B, provides basic information and requirements, whereas rules in Chapter 89 are designed to assist school districts by providing more specific and detailed guidance on how to effectively implement statutory requirements.

Comment. One administrator expressed concern that §89.1225(k), which states that English learners for whom the LPAC has recommended designated supports or accommodations on the state reading or writing assessment instrument shall not be eligible for program exit, will increase the number of long-term English learners in the state.

Agency Response. The agency disagrees. If the LPAC has determined that linguistic supports are needed in order for an English learner to be successful on state assessments, the English learner is not considered ready for successful participation in classroom instruction that is not designed to meet his or her specific needs.

Comment. One administrator recommended that language be added in §89.1207(a)(1) to clarify that students should not be placed in ESL merely because an appropriately certified bilingual teacher is not available, but rather that an exception should be submitted and specific TSDS PEIMS codes entered.

Agency Response. The agency disagrees and has maintained language as proposed. The language in rule provides a general description of the actions to be taken when submitting a bilingual exception. The agency provides guidance on the TEA website at https://tea.texas.gov/bilingual/esl/education/.

Comment. One administrator recommended that language be added to §89.1207(a) and (b)(1)(e) to make clear that Title III funds are not to be used to help meet the 10% minimum requirement for expenditure of bilingual education allotment funds to provide professional development activities in cases where an exception or waiver was filed.

Agency Response. The agency disagrees and has maintained language as proposed. The language in rule makes clear the expectation that a minimum of 10% of bilingual allotment funds, not Title III funds, are to be used to provide targeted professional development. In addition, a definition of the bilingual education allotment has been added in §89.1203(2) to provide further clarification.

Comment. One administrator recommended adding "in accordance with §89.1233(a)" to the end of the sentence in §89.1228(a) to clarify that services for English learners shall be prioritized over the needs of English-fluent students in a bilingual education program.

Agency Response. The agency agrees that additional clarification is necessary. In response to this comment, §89.1228(a) has been modified at adoption to read, "Student enrollment in a two-way dual language immersion program model is optional for English proficient students in accordance with §89.1233(a) of this title (relating to Participation of English Proficient Students)."

Comment. One administrator expressed concern that the required minimum number of hours for summer school services for English learners is excessive and recommended the required number be reduced.

Agency Response. The agency disagrees and has maintained language as proposed. It is a statutory requirement under TEC, §29.060(a), that a minimum of 120 hours of summer school instruction be provided.

Comment. One administrator expressed support for the selection of the TELPAS as the most accurate measure of English proficiency to be used for making student reclassification decisions.

Agency Response. The agency agrees and has maintained language as proposed.

Comment. One administrator expressed support for the proposed changes in program model descriptions and teacher certification requirements but suggested that implementation of these proposed changes be deferred one year for full implementation in the 2019-2020 school year to allow districts time and budgetary flexibility to provide teachers training and preparation for taking the ESL supplemental certification exam.

Agency Response. The agency disagrees and has maintained language as proposed. The agency acknowledges that districts will go through an adjustment process to be fully compliant with the new rules. Districts will be afforded the flexibility to apply for ESL waivers while they adjust to comply with new rules. Another option is for districts to change how they code their program model in TSDS PEIMS from content-based ESL to ESL pull-out to avoid applying for additional ESL waivers during the transition.

Comment. One teacher, the Texas Teachers of English to Speakers of Other Languages (TexTESOL), and two administrators suggested that a parent representative no longer be required on the LPAC or that school districts be able to pay parents for serving on the LPAC. The commenters cited that other states do not require parent representation on the LPAC and that districts experience difficulty recruiting parents for this role, getting parents to take the necessary time off work to serve on the LPAC, and convening the LPAC in a timely manner in compliance with required timelines.

Agency Response. The agency disagrees. The inclusion of a parent representative on the LPAC is a statutory requirement under TEC, §29.063(b). The role of the parent representative on the LPAC is to provide input that is independent of the school district. Payment of the parent representative could be construed as a potential conflict of interest.

Comment. One administrator expressed the opinion that added requirements for waiver documentation and assurances are a moot point and that actionable supports from the TEA and regional education service centers are needed for districts to find quality teacher candidates.

Agency Response. The agency disagrees and has maintained language as proposed. The agency provides guidance on the TEA website at https://tea.texas.gov/bilingual/esl/education/. Further guidance is currently under development and will be posted on the TEA website.

Comment. One administrator and TexTESOL expressed general support for the proposed changes and cited increased clarity in language as a noted improvement.

Agency Response. The agency agrees.

Comment. One administrator requested clarification of the meaning of the terms "intensive instruction" and "mastery" as used in §89.1210.

Agency Response. The agency provides the following clarification. The terms "intensive instruction" and "mastery" are taken from TEC, §29.055(a). "Intensive instruction" is instruction delivered by teachers trained in recognizing and dealing with language differences. "Mastery" is attainment of full proficiency in English through participation in carefully structured and sequenced instruction in English language skills.

Comment. One administrator suggested that the bilingual teacher on the LPAC be specifically identified as the bilingual teacher of record.

Agency Response. The agency disagrees and has maintained language as proposed. The specific role of the bilingual teacher represented on the LPAC lies outside the scope of statutory requirements. Specific information and recommendations for best practices in the composition of the LPAC are shared in guidance and posted on the TEA website at https://tea.texas.gov/bilingual/esl/education/.

Comment. TexTESOL stated that English language proficiency assessments used in other states have five or six levels, whereas the TELPAS used in Texas only has four levels, thus not allowing sufficient time for English learners to acquire English language skills, which research indicates take on average 5-7 years to develop.

Agency Response. The agency disagrees. The four levels of English language proficiency identified through TELPAS are not devised to each represent categorically one year of progress in attaining language proficiency. Students may advance at different rates in each language domain (reading, writing, listening, speaking) and may progress through the four TELPAS levels at a rate commensurate with their abilities.

Comment. One member of the SBOE and one administrator commented that the TEA should stop using the term limited English proficient as it is a subtractive and derogatory term.

Agency Response. The agency provides the following clarification. The term "student of limited English proficiency" is used throughout TEC, Chapter 29, Subchapter B. In the proposed revisions to Chapter 89, the term LEP is replaced with English learner whenever statutorily allowable. In response to these comments, the definition of English learner in §89.1203(7) has been modified at adoption to read, "A student who is in the process of acquiring English and has another language as the primary language. The terms English language learner and English learner are used interchangeably and are synonymous with limited English proficient (LEP) student, as used in TEC, Chapter 29, Subchapter B."

Comment. The Mexican American Legal Defense and Educational Fund (MALDEF) expressed concern that the proposed provisions §89.1210(d)(1) and (2) remove the current requirement that schools provide sheltered instruction in all content areas for English learners in high schools without replacing it with further guidance for teachers and schools. MALDEF further asserted that removing the requirement for sheltered instruction from both ESL program models provides no guidance for teachers on how to teach academic content that is "linguistically and culturally responsive," in accordance with proposed §89.1210(d)(1) and (2). MALDEF stated that TEA would do a disservice to English learners in secondary schools and help contribute to their already high dropout rates should the proposed rules be adopted. MALDEF requested that the proposed revisions be modified to include sheltered instruction for all content areas in both English as a second language program models.

Agency Response. The agency disagrees and has maintained language as proposed. The ESL program model descriptions put forth in proposed §89.1210(d)(1) and (2) represent a strengthening of the qualification requirements by making clear that the teacher(s) serving an English learner must have full ESL certification. In the ESL pull-out model, it is the English language arts and reading teacher who must be ESL certified. In the content-based ESL model, all four core content area teachers (English language arts and reading, mathematics, science, social studies) must be ESL certified in order to ensure content-based ESL instruction is delivered effectively. To gain full ESL certification, teachers must be able to demonstrate a wide range of skills and competencies that include, but go above and beyond, sheltered instruction. The TEA has determined that the new ESL certification requirements for teachers serving English learners through either of the state's two ESL program models greatly increase the state's ability to effectively meet the

needs of English learners at the elementary and the secondary levels.

Comment. One administrator suggested that language be added in §89.1265(b)(4) to make clear that the training provided to teachers and aides is targeted to build capacity in meeting the needs of English learners.

Agency Response. The agency agrees that additional clarification is necessary. In response to this comment, §89.1265(b)(4) has been modified at adoption to read, "the number of teachers and aides trained and the frequency, scope, and results of the professional development in approaches and strategies that support second language acquisition."

Comment. One administrator recommended the inclusion in rule text of clearly defined stipulations for districts that demonstrate areas of concern of English learner performance based on their annual evaluation.

Agency Response. The agency disagrees as there is no statutory authority for making such stipulations. The agency has maintained language as proposed.

Agency Response. The agency provides the following clarification. The term "equitable access" refers to the ways in which educational institutions and policies ensure that all students have the opportunity to take full advantage of the full range of resources made generally available.

Comment. One administrator requested clarification as to what data districts should use to determine whether a student needs to stay at a newcomer center for a second year.

Agency Response. The agency provides the following clarification. The LPAC shall review the progress of the English learner at the end of the first year of enrollment at the newcomer center in accordance with §89.1220(g) to determine the most appropriate placement for the student in the following school year.

Comment. One member of the SBOE recommended adding "thinking" to the list of areas in which an English learner is to become competent in fulfillment of the goals of bilingual education programs to correlate with the TEKS.

Agency Response. The agency disagrees. English learner programs focus on the development of the four language domains recognized in second language acquisition research, namely reading, writing, listening, and speaking. The agency has maintained the language as proposed.

Comment. One member of the SBOE asked for clarification of the term "primary language" as used throughout the proposed rules, specifically regarding whether its use means that students will be taught in their native language (including languages other than Spanish). On a related note, the SBOE member asked for clarification as to what the use of the term "primary language" implies for staffing at the district level.

Agency Response. The agency provides the following clarification. The use of primary language is an inclusive term to replace "Spanish or another language" in current rule text. If a school district meets the criteria that require that it provide some form of bilingual education program services in accordance with §89.1205(a) and (b), the school district is required to provide those services in the primary language of that group of students, be it Spanish, Vietnamese, Arabic, or some other language. Accordingly, the school district in question shall staff those classrooms with appropriately certified bilingual teachers to deliver instruction in that group of students' primary language and English.

Comment. One member of the SBOE asked for clarification as to who or what determines the second language acquisition methods to be used across the state as part of ESL programming.

Agency Response. The agency provides the following clarification. The second language acquisition methods to be used across the state in the delivery of effective ESL programming and instruction are established through the competencies tested on the ESL certification test, which must be successfully completed in order for a teacher to become ESL certified and serve in one of the state's ESL program model classrooms.

Comment. A member of the SBOE asked for clarification on the meaning of the term "professional transitional language educator," including the source of the definition, credentialed college of education, university training, qualifying course, and credits earner.

Agency Response. The agency provides the following clarification. The term "professional transitional language educator" is used in TEC, §29.063, with no definition or credentialing information provided. It is synonymous with ESL-certified teacher in Chapter 89.

Comment. A member of the SBOE expressed concern that the deletion of language regarding the denial of a bilingual exception for districts that have excessive numbers of allowable exemptions from required state assessments will provide room for entities to commit fraud and will not protect students.

Agency Response. The agency disagrees. The language regarding excessive numbers of allowable exemptions was deleted because it is outdated and does not align with current guidance from the TEA Division of Student Assessment, as exemptions are no longer allowable for English learners on required state assessments. The agency has maintained the language as proposed.

Comment. One member of the SBOE asked for clarification regarding which students are served through dual language one-way and two-way program models.

Agency Response. The agency provides the following clarification. Students whose primary language is English may be served through a two-way dual language program model, alongside students identified as English learners. One-way dual language programs serve students currently or formerly identified as English learners exclusively.

Comment. One member of the SBOE asked whether schools that do not meet the general standards for recognition of dual language immersion program models outlined in §89.1229 are not allowed to implement a dual language program.

Agency Response. The agency provides the following clarification. This rule describes requirements for a school implementing a dual language program model to get special recognition. Schools that do not meet the general standards put forth in this rule may continue to operate, but they will not gain recognition.

Comment. One member of the SBOE requested an explanation of the rationale behind the rule that the number of participating students who are not English learners shall not exceed 40% of the number of students enrolled in the program districtwide.

Agency Response. The agency provides the following clarification. As referenced in the rule text itself, the 40% is in accordance with requirements put forth in TEC, §29.058.

Comment. One administrator expressed appreciation for changes in language throughout the proposed rule text that portrays English learners in a more positive light and aligns with language used in ESSA. Specific examples included the discontinuation of use of the term LEP and the use of the term "linguistic needs" instead of "special needs."

Agency Response. The agency agrees and has maintained the language as proposed.

Comment. One administrator commented that the use of the term "dual-language instruction" creates confusion because it can easily be misinterpreted as the dual language immersion program and suggested that the agency substitute this phrase with "bilingual instruction."

Agency Response. The agency disagrees and has maintained the language as proposed. Clarification of the term is adequately provided through inclusion of a definition for "dual-language instruction" in §89.1203(4) and through a parenthetical clarification of the term as "English and primary language" instruction in §89.1205(b).

Comment. One administrator strongly supported the proposed revisions for §89.1207(a)(1)(D) and (E), commenting that the new language regarding the comprehensive professional development plan allows and encourages coherence and strategic alignment around the greater goal of program implementation and student achievement while still requiring attention to alternative programs.

Agency Response. The agency agrees and has maintained the language as proposed.

Comment. One administrator expressed support for the revised program model definitions in §89.1210(a), which are seen to provide much needed clarification of bilingual education and ESL programs, especially differences between dual language and transitional bilingual programs. The commenter stated that the proposed revisions also provide greater alignment with education code pertaining to instructional materials, the English language proficiency standards (ELPS), and incorporation of students' primary languages and cultural aspects of students' backgrounds.

Agency Response. The agency agrees and has maintained the language as proposed.

Comment. One administrator recommended edits to §89.1235 to clarify possible misinterpretations that the proposed language might lead school districts to believe that they are required to enroll students in newcomer centers.

Agency Response. The agency agrees that additional clarification is necessary. In response to this and other comments, §89.1235 has been modified at adoption to read, "Recent immigrant English learners shall not remain enrolled in newcomer centers for longer than two years."

Comment. One administrator expressed support for the proposed revisions under §89.1226(c)(1) and (2), stating that standardization of a specific state-approved English language proficiency test for identification makes it easier to interpret student information when they move from one district to another.

Agency Response. The agency agrees and has maintained the language as proposed.

Comment. Texas Classroom Teachers Association (TCTA) voiced concern over striking language in current rule text referring to teachers serving on some type of permit, stating that the proposed language provides no clear mechanism by which inappropriately certified or uncertified teachers assigned to teach bilingual education must work toward completing certain requirements within a certain time frame in order to become appropriately certified by the end of that time frame. TCTA suggested that the rules be further revised to clearly address what the mechanism is and what the expectations are for uncertified teachers to attain the appropriate certification.

Agency Response. The agency agrees that additional clarification is necessary. In response to this comment, §89.1245(a) has been modified at adoption to read, "School districts that are unable to secure a sufficient number of appropriately certified bilingual education and/or ESL teachers to provide the required programs shall request activation of the appropriate permits in accordance with Chapter 230 of this title (relating to Professional Educator Preparation and Certification)."

Comment. TCTA recommended that the word "appropriately" be added before the word "certified" throughout §89.1207 to align with §89.1245 and make perfectly clear that teachers hired to serve English learners in a bilingual education or ESL program must hold all necessary certifications.

Agency Response. The agency agrees that additional clarification is necessary. In response to this comment, language has been modified at adoption to change "certified" to "appropriately certified" in §§89.1201(a)(3); 89.1207(a)(1), (a)(1)(A), (a)(1)(C), (a)(1)(D)(ii), (a)(1)(F), (b)(1), (b)(1)(A), (b)(1)(C), (b)(1)(D)(ii), (b)(1)(F), and (b)(2)(E); 89.1210(d)(1) and (2); and 89.1220(b).

19 TAC §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1225 - 89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, 89.1265

STATUTORY AUTHORITY. The amendments and new sections are adopted under Texas Education Code (TEC), §29.051, which establishes the policy of the state to ensure equal educational opportunity to students with limited English proficiency through the provision of bilingual education and special language programs in the public schools and supplemental financial assistance to help school districts meet the extra costs of the programs; TEC, §29.053, which outlines requirements for reporting the number of students with limited English proficiency in school districts and explains the criteria for determining whether a district is required to provide bilingual education or special language programs at the elementary and secondary school levels; TEC, §29.054, which describes the application process and documentation requirements for school districts filing a bilingual education exception; TEC, §29.055, which establishes basic requirements in the content and methods of instruction for the state's bilingual education and special language programs; TEC, §29.056, which authorizes the state to establish standardized criteria for the identification, assessment, and classification of students of limited English proficiency and describes required procedures for the identification, placement, and exiting of students with limited English proficiency; TEC, §29.0561, which provides information regarding requirements for the reevaluation and monitoring of students with limited English proficiency for two years after program exit; TEC, §29.057, which requires that bilingual education and special language programs be located in the regular

public schools rather than separate facilities, that students with limited English proficiency are placed in classes with other students of similar age and level of educational attainment, and that a maximum student-teacher ratio be set by the state that reflects student needs; TEC, §29.058, which authorizes districts to enroll students who do not have limited English proficiency in bilingual education programs, with a maximum enrollment of such students set at 40% of the total number of students enrolled in the program; TEC, §29.059, which allows school districts flexibility to join other districts to provide services for students with limited English proficiency; TEC, §29.060, which describes requirements for offering summer school programs for students with limited English proficiency eligible to enter kindergarten or Grade 1 in the subsequent school year; TEC, §29.061, which describes teacher certification requirements for educators serving students with limited English proficiency in bilingual education and special language programs; TEC, §29.062, which authorizes the state to evaluate the effectiveness of programs under TEC, Subchapter B; TEC, §29.063, which explains the roles and responsibilities of the language proficiency assessment committee and describes the composition of its membership; TEC, §29.064, which allows for a parent appeals process; and TEC, §29.066, which provides information regarding a school district's coding of students participating in bilingual education and special language programs through the Texas Student Data System Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement Texas Education Code, §§29.051, 29.053-29.056, 29.0561, 29.057-29.063, and 29.066.

§89.1201. Policy.

(a) It is the policy of the state that every student in the state who has a primary language other than English and who is identified as an English learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in the Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the TEC, §1.002(a), each school district shall:

(1) identify English learners based on criteria established by the state;

(2) provide bilingual education and ESL programs, as integral parts of the general program as described in the TEC, §4.002;

(3) seek appropriately certified teaching personnel to ensure that English learners are afforded full opportunity to master the essential knowledge and skills required by the state; and

(4) assess achievement for essential knowledge and skills in accordance with the TEC, Chapter 29, to ensure accountability for English learners and the schools that serve them.

(b) The goal of bilingual education programs shall be to enable English learners to become competent in listening, speaking, reading, and writing in the English language through the development of literacy and academic skills in the primary language and English. Such programs shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English learners to participate equitably in school.

(c) The goal of ESL programs shall be to enable English learners to become competent in listening, speaking, reading, and writing in the English language through the integrated use of second language acquisition methods. The ESL program shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English learners to participate equitably in school.

(d) Bilingual education and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the specific language needs of English learners. The basic curriculum content of the programs shall be based on the Texas Essential Knowledge and Skills and the English language proficiency standards required by the state.

§89.1203. Definitions.

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

(1) Bilingual education allotment--An adjusted basic funding allotment provided for each school district based on student average daily attendance in a bilingual education or special language program in accordance with Texas Education Code (TEC), §42.153.

(2) Certified English as a second language teacher--The term "certified English as a second language teacher" as used in this subchapter is synonymous with the term "professional transitional language educator" used in TEC, §29.063.

(3) Dual language immersion--A state-approved bilingual program model in accordance with TEC, §29.066.

(4) Dual-language instruction--An educational approach that focuses on the use of English and the student's primary language for instructional purposes.

(5) English as a second language program--A special language program in accordance with TEC, Chapter 29.

(6) English language proficiency standards (ELPS)--Standards to be published along with the Texas Essential Knowledge and Skills for each subject in the required curriculum outlined in Chapter 74 of this title (relating to Curriculum Requirements), including foundation and enrichment areas, ELPS, and college and career readiness standards.

(7) English learner--A student who is in the process of acquiring English and has another language as the primary language. The terms English language learner and English learner are used interchangeably and are synonymous with limited English proficient (LEP) student, as used in TEC, Chapter 29, Subchapter B.

(8) Exit--The point when a student is no longer classified as LEP (i.e., the student is reclassified), no longer requires bilingual or special language program services, and is classified as non-LEP in the Texas Student Data System Public Education Information Management System (TSDS PEIMS). The term "exit" as used in this subchapter is synonymous with the description in TEC, Chapter 29, of "transferring out" of bilingual or special language programming.

(9) Reclassification--The process by which the language proficiency assessment committee determines that an English learner has met the appropriate criteria to be classified as non-LEP and is coded as such in TSDS PEIMS.

(10) School district--For the purposes of this subchapter, the definition of a school district includes an open-enrollment charter school.

§89.1207. Bilingual Education Exceptions and English as a Second Language Waivers.

(a) Bilingual education program.

(1) Exceptions. A school district that is unable to provide a bilingual education program as required by §89.1205(a) of this title

(relating to Required Bilingual Education and English as a Second Language Programs) because of an insufficient number of appropriately certified teachers shall request from the commissioner of education an exception to the bilingual education program and the approval of an alternative program. The approval of an exception to the bilingual education program shall be valid only during the school year for which it was granted. A request for a bilingual education program exception must be submitted by November 1 and shall include:

(A) a statement of the reasons the school district is unable to provide a sufficient number of appropriately certified teachers to offer the bilingual education program with supporting documentation;

(B) a description of the alternative instructional program and methods to meet the affective, linguistic, and cognitive needs of the English learners, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, English language proficiency standards (ELPS), and college and career readiness standards (CCRS);

(C) an assurance that appropriately certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the English learners with beginning levels of English proficiency are served on a priority basis;

(D) an assurance that the school district will implement a comprehensive professional development plan that:

(i) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of English learners;

(ii) includes the teachers who are not certified or not appropriately certified who are assigned to implement the proposed alternative program; and

(iii) may include additional teachers who work with English learners;

(E) an assurance that at least 10% of the bilingual education allotment shall be used to fund the comprehensive professional development plan required under subparagraph (D) of this paragraph;

(F) an assurance that the school district will take actions to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year; and

(G) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title (relating to Evaluation).

(2) Documentation. A school district submitting a bilingual education exception shall maintain written records of all documents supporting the submission and assurances listed in paragraph (1) of this subsection, including:

(A) a description of the proposed alternative instructional program designed to meet the affective, linguistic, and cognitive needs of the English learners;

(B) the number of teachers for whom a bilingual education exception is needed by grade level and per campus;

(C) a copy of the school district's comprehensive professional development plan; and

(D) a copy of the bilingual allotment budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan.

(3) Approval of exceptions. Bilingual education program exceptions will be granted by the commissioner if the requesting school district:

(A) meets or exceeds the state average for English learner performance on the required state assessments;

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(F) of this subsection submitted the previous year and approved by the Texas Education Agency (TEA); or

(C) reduces by 25% the number of teachers under exception for bilingual programs when compared to the number of exceptions granted the previous year.

(4) Denial of exceptions. A school district denied a bilingual education program exception must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.

(5) Appeals. A school district denied a bilingual education program exception may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.

(6) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the Texas Education Code (TEC), §39.057, if a school district is denied a bilingual education program exception for more than three consecutive years.

(7) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102.

(b) English as a second language (ESL) program.

(1) Waivers. A school district that is unable to provide an ESL program as required by §89.1205(c) of this title because of an insufficient number of appropriately certified teachers shall request from the commissioner a waiver of the certification requirements for each teacher who will provide instruction in ESL for English learners. The approval of a waiver of certification requirements shall be valid only during the school year for which it was granted. A request for an ESL program waiver must be submitted by November 1 and shall include:

(A) a statement of the reasons the school district is unable to provide a sufficient number of appropriately certified teachers to offer the ESL program;

(B) a description of the alternative instructional program, including the manner in which the teachers in the ESL program will meet the affective, linguistic, and cognitive needs of the English learners, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title to include foundation and enrichment areas, ELPS, and CCRS;

(C) an assurance that appropriately certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus and, if needed, secondary campuses, to ensure that the linguistic and academic needs of the

English learners with the lower levels of English proficiency are served on a priority basis;

(D) an assurance that the school district shall implement a comprehensive professional development plan that:

(i) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of English learners;

(ii) includes the teachers who are not certified or not appropriately certified who are assigned to implement the proposed alternative program; and

(iii) may include additional teachers who work with English learners;

(E) an assurance that at least 10% of the bilingual education allotment shall be used to fund the comprehensive professional development plan required under subparagraph (D) of this paragraph;

(F) an assurance that the school district will take actions to ensure that the program required under §89.1205(c) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent waivers; and

(G) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title.

(2) Documentation. A school district submitting an ESL waiver shall maintain written records of all documents supporting the submission and assurances listed in paragraph (1) of this subsection, including:

(A) a description of the proposed alternative instructional program designed to meet the affective, linguistic, and cognitive needs of the English learners;

(B) the name and teaching assignment, per campus, of each teacher who is assigned to implement the ESL program and is under a waiver and the estimated date for the completion of the ESL supplemental certification, which must be completed by the end of the school year for which the waiver was requested;

(C) a copy of the school district's comprehensive professional development plan;

(D) a copy of the bilingual allotment budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan; and

(E) a description of the actions taken to recruit an adequate number of appropriately certified teachers.

(3) Approval of waivers. ESL waivers will be granted by the commissioner if the requesting school district:

(A) meets or exceeds the state average for English learner performance on the required state assessments; or

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(G) of this subsection submitted the previous year and approved by the TEA.

(4) Denial of waivers. A school district denied an ESL program waiver must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.

(5) Appeals. A school district denied an ESL waiver may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.

(6) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.057, if a school district is denied an ESL waiver for more than three consecutive years.

(7) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102.

§89.1210. Program Content and Design.

(a) Each school district required to offer a bilingual education or English as a second language (ESL) program shall provide each English learner the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall accommodate the instruction, pacing, and materials to ensure that English learners have a full opportunity to master the essential knowledge and skills of the required curriculum, which includes the Texas Essential Knowledge and Skills and English language proficiency standards (ELPS). Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their primary language or in English for each content area.

(1) A bilingual education program of instruction established by a school district shall be a full-time program of dual-language instruction (English and primary language) that provides for learning basic skills in the primary language of the students enrolled in the program and for carefully structured and sequenced mastery of English language skills under Texas Education Code (TEC), §29.055(a).

(2) An ESL program of instruction established by a school district shall be a program of intensive instruction in English in which ESL teachers recognize and address language differences in accordance with TEC, §29.055(a).

(b) The bilingual education program and ESL program shall be integral parts of the general educational program required under Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, ELPS, and college and career readiness standards. In bilingual education programs, school districts shall purchase instructional materials in both program languages with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes in accordance with TEC, §31.029(a). Instructional materials for bilingual education programs on the list adopted by the commissioner of education, as provided by TEC, §31.0231, may be used as curriculum tools to enhance the learning process. The school district shall provide for ongoing coordination between the bilingual/ESL program and the general educational program. The bilingual education and ESL programs shall address the affective, linguistic, and cognitive needs of English learners as follows.

(1) Affective.

(A) English learners in a bilingual program shall be provided instruction using second language acquisition methods in their primary language to introduce basic concepts of the school environment, and content instruction both in their primary language and in English, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to consider the students' learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).

(B) English learners in an ESL program shall be provided instruction using second language acquisition methods in English

to introduce basic concepts of the school environment, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to incorporate the students' primary languages and learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).

(2) Linguistic.

(A) English learners in a bilingual program shall be provided intensive instruction in the skills of listening, speaking, reading, and writing both in their primary language and in English, provided through the ELPS. The instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.

(B) English learners in an ESL program shall be provided intensive instruction to develop proficiency in listening, speaking, reading, and writing in the English language, provided through the ELPS. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.

(3) Cognitive.

(A) English learners in a bilingual program shall be provided instruction in language arts, mathematics, science, and social studies both in their primary language and in English, using second language acquisition methods in either their primary language, in English, or in both, depending on the specific program model(s) implemented by the district. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.

(B) English learners in an ESL program shall be provided instruction in English in language arts, mathematics, science, and social studies using second language acquisition methods. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.

(c) The bilingual education program shall be implemented through at least one of the following program models.

(1) Transitional bilingual/early exit is a bilingual program model in which students identified as English learners are served in both English and another language and are prepared to meet reclassification criteria to be successful in English-only instruction not earlier than two or later than five years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(1), for the assigned grade level and content area. The goal of early-exit transitional bilingual education is for program participants to use their primary language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' primary language along with instruction in English that targets second language development through academic content.

(2) Transitional bilingual/late exit is a bilingual program model in which students identified as English learners are served in both English and another language and are prepared to meet reclassification criteria to be successful in English-only instruction not earlier than six or later than seven years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(2), for the assigned grade level and content area. The goal of late-exit transitional bilingual education is for program participants to use their primary language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' primary language along with instruction in English that targets second language development through academic content.

(3) Dual language immersion/one-way is a bilingual/biliteracy program model in which students identified as English learners are served in both English and another language and are prepared to meet reclassification criteria in order to be successful in English-only instruction not earlier than six or later than seven years after the student enrolls in school. Instruction provided in a language other than English in this program model is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. Instruction provided in English in this program model may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of one-way dual language immersion is for program participants to attain full proficiency in another language as well as English. This model provides ongoing instruction in literacy and academic content in the students' primary language as well as English, with at least half of the instruction delivered in the students' primary language for the duration of the program.

(4) Dual language immersion/two-way is a bilingual/biliteracy program model in which students identified as English learners are integrated with students proficient in English and are served in both English and another language and are prepared to meet reclassification criteria in order to be successful in English-only instruction not earlier than six or later than seven years after the student enrolls in school. Instruction provided in a language other than English in this program model is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061, for the assigned grade level and content area. Instruction provided in English in this program model may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061, for the assigned grade level and content area. The goal of two-way dual language immersion is for program participants to attain full proficiency in another language as well as English. This model provides ongoing instruction in literacy and academic content in English and another language with at least half of the instruction delivered in the non-English program language for the duration of the program.

(d) The ESL program shall be implemented through one of the following program models.

(1) An ESL/content-based program model is an English acquisition program that serves students identified as English learners through English instruction by a teacher appropriately certified in ESL under TEC, §29.061(c), through English language arts and reading, mathematics, science, and social studies. The goal of content-based ESL is for English learners to attain full proficiency in English in order to participate equitably in school. This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading, mathematics, science, and social studies.

(2) An ESL/pull-out program model is an English acquisition program that serves students identified as English learners through English instruction provided by an appropriately certified ESL teacher under the TEC, §29.061(c), through English language arts and reading. The goal of ESL pull-out is for English learners to attain full proficiency in English in order to participate equitably in school. This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading. Instruction shall be provided by the ESL teacher in a pull-out or inclusionary delivery model.

(e) Except in the courses specified in subsection (f) of this section, second language acquisition methods, which may involve the use of the students' primary language, may be provided in any of the courses or electives required for promotion or graduation to assist the English learners to master the essential knowledge and skills for the required subject(s). The use of second language acquisition methods shall not impede the awarding of credit toward meeting promotion or graduation requirements.

(f) In subjects such as art, music, and physical education, English learners shall participate with their English-speaking peers in general education classes provided in the subjects. As noted in TEC, §29.055(d), elective courses included in the curriculum may be taught in a language other than English. The school district shall ensure that students enrolled in bilingual education and ESL programs have a meaningful opportunity to participate with other students in all extracurricular activities.

(g) The required bilingual education or ESL program shall be provided to every English learner with parental approval until such time that the student meets exit criteria as described in §89.1225(i) of this title (relating to Testing and Classification of Students) or §89.1226(i) of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020) or graduates from high school.

§89.1220. Language Proficiency Assessment Committee.

(a) School districts shall by local board policy establish and operate a language proficiency assessment committee. The school district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).

(b) The language proficiency assessment committee shall include an appropriately certified bilingual educator (for students served through a bilingual education program), an appropriately certified English as a second language (ESL) educator (for students served through an ESL program), a parent of an English learner participating in a bilingual or ESL program, and a campus administrator in accordance with Texas Education Code (TEC), §29.063.

(c) In addition to the three required members of the language proficiency assessment committee, the school district may add other trained members to the committee.

(d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.

(e) A school district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within four weeks of the enrollment of English learners.

(f) All members of the language proficiency assessment committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The school district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.

(g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all English learners identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students) or §89.1226 of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020) and shall:

(1) designate the language proficiency level of each English learner in accordance with the guidelines issued pursuant to §89.1225(b)-(f) or §89.1226(b)-(f) of this title;

(2) designate the level of academic achievement of each English learner;

(3) designate, subject to parental approval, the initial instructional placement of each English learner in the required program;

(4) facilitate the participation of English learners in other special programs for which they are eligible while ensuring full access to the language program services required under the TEC, §29.053; and

(5) reclassify students, at the end of the school year only, as English proficient in accordance with the criteria described in §89.1225(i) or §89.1226(i) of this title.

(h) The language proficiency assessment committee shall give written notice to the student's parent or guardian, advising that the student has been classified as an English learner and requesting approval to place the student in the required bilingual education or ESL program not later than the 10th calendar day after the date of the student's classification in accordance with TEC, §29.056. The notice shall include information about the benefits of the bilingual education or ESL program for which the student has been recommended and that it is an integral part of the school program.

(i) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each English learner as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).

(j) Pending parent approval of an English learner's entry into the bilingual education or ESL program recommended by the language proficiency assessment committee, the school district shall place the student in the recommended program. Only English learners with parent approval who are receiving services will be included in the bilingual education allotment.

(k) The language proficiency assessment committee shall monitor the academic progress of each student who has met criteria for exit in accordance with TEC, §29.056(g), for the first two years after reclassification. If the student earns a failing grade in a subject in the foundation curriculum under TEC, §28.002(a)(1), during any grading period in the first two school years after the student is reclassified, the language proficiency assessment committee shall determine, based on the student's second language acquisition needs, whether the student may require intensive instruction or should be reenrolled in a bilingual education or special language program. In accordance with TEC, §29.0561, the language proficiency assessment committee shall review the student's performance and consider:

(1) the total amount of time the student was enrolled in a bilingual education or special language program;

(2) the student's grades each grading period in each subject in the foundation curriculum under TEC, §28.002(a)(1);

(3) the student's performance on each assessment instrument administered under TEC, §39.023(a) or (c);

(4) the number of credits the student has earned toward high school graduation, if applicable; and

(5) any disciplinary actions taken against the student under TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).

(l) The student's permanent record shall contain documentation of all actions impacting the English learner.

(1) Documentation shall include:

(A) the identification of the student as an English learner;

(B) the designation of the student's level of language proficiency;

(C) the recommendation of program placement;

(D) parental approval of entry or placement into the program;

(E) the dates of entry into, and placement within, the program;

(F) assessment information as outlined in Chapter 101, Subchapter AA, of this title;

(G) additional instructional interventions provided to address the specific language needs of the student;

(H) the date of exit from the program and parental approval;

(I) the results of monitoring for academic success, including students formerly classified as English learners, as required under the TEC, §29.063(c)(4); and

(J) the home language survey.

(2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.

(m) A school district may identify, exit, or place a student in a program without written approval of the student's parent or guardian if:

(1) the student is 18 years of age or has had the disabilities of minority removed;

(2) the parent or legal guardian provides approval through a phone conversation or e-mail that is documented in writing and retained; or

(3) an adult who the school district recognizes as standing in parental relation to the student provides written approval. This may include a foster parent or employee of a state or local governmental agency with temporary possession or control of the student.

§89.1228. Two-Way Dual Language Immersion Program Model Implementation.

(a) Student enrollment in a two-way dual language immersion program model is optional for English proficient students in accordance with §89.1233(a) of this title (relating to Participation of English Proficient Students).

(b) A two-way dual language immersion program model shall fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability.

(c) A school district implementing a two-way dual language immersion program model shall develop a policy on enrollment and continuation for students in this program model. The policy shall address:

(1) eligibility criteria;

(2) program purpose;

(3) the district's commitment to providing equitable access to services for English learners;

(4) grade levels in which the program will be implemented;

(5) support of program goals as stated in §89.1210 of this title (relating to Program Content and Design); and

(6) expectations for students and parents.

(d) A school district implementing a two-way program model shall obtain written parental approval as follows.

(1) For English learners, written parental approval is obtained in accordance with §89.1240 of this title (relating to Parental Authority and Responsibility).

(2) For English proficient students, written parental approval is obtained through a school district-developed process.

§89.1229. General Standards for Recognition of Dual Language Immersion Program Models.

(a) School recognition. A school district may recognize one or more of its schools that implement an exceptional dual language immersion program model if the school meets all of the following criteria.

(1) The school must meet the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model).

(2) The school must receive an acceptable performance rating in the state accountability system.

(3) The school must not be identified for any stage of intervention for the district's bilingual and/or English as a second language program under the performance-based monitoring system.

(b) Student recognition. A student participating in a dual language immersion program model or any other state-approved bilingual or ESL program model may be recognized by the program and its local school district board of trustees by earning a performance acknowledgement in accordance with §74.14 of this title (relating to Performance Acknowledgments).

§89.1235. Facilities.

Bilingual education and English as a second language (ESL) programs shall be located in the public schools of the school district with equitable access to all educational resources rather than in separate facilities. In order to provide the required bilingual education or ESL programs, school districts may concentrate the programs at a limited number of facilities within the school district. Recent immigrant English learners shall not remain enrolled in newcomer centers for longer than two years.

§89.1245. Staffing and Staff Development.

(a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language (ESL) programs in accordance with the Texas Education Code (TEC), §29.061, concerning bilingual education and special language program teachers. School districts that are unable to secure a sufficient number of appropriately certified bilingual education and/or ESL teachers to provide the required programs shall request activation of the appropriate permits in accordance with Chapter 230 of this title (relating to Professional Educator Preparation and Certification).

(b) School districts that are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual education and ESL programs shall apply on or before November 1 for an exception to the bilingual education program as provided in §89.1207(a) of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers) or a waiver of the certification requirements in the ESL program as provided in §89.1207(b) of this title as needed.

(c) Teachers assigned to the bilingual education program and/or ESL program may receive salary supplements as authorized by the TEC, §42.153.

(d) School districts may compensate teachers and aides assigned to bilingual education and ESL programs for participation in professional development designed to increase their skills or lead to bilingual education or ESL certification.

(e) The commissioner of education shall encourage school districts to cooperate with colleges and universities to provide training for teachers assigned to the bilingual education and/or ESL programs.

(f) The Texas Education Agency shall develop, in collaboration with education service centers, resources for implementing bilingual education and ESL training programs. The materials shall provide a framework for:

(1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;

(2) affectively, linguistically, and cognitively appropriate instruction in bilingual education and ESL programs in accordance with §89.1210(b)(1)-(3) of this title (relating to Program Content and Design); and

(3) developmentally appropriate programs for English learners identified as gifted and talented and English learners with disabilities.

§89.1265. Evaluation.

(a) All school districts required to conduct a bilingual education or English as a second language (ESL) program shall conduct an annual evaluation in accordance with Texas Education Code (TEC), §29.053, collecting a full range of data to determine program effectiveness to ensure student academic success. The annual evaluation report shall be presented to the board of trustees before November 1 of each year and the report shall be retained at the school district level in accordance with TEC, §29.062.

(b) Annual school district reports of educational performance shall reflect:

(1) the academic progress in the language(s) of instruction for English learners;

(2) the extent to which English learners are becoming proficient in English;

(3) the number of students who have been exited from the bilingual education and ESL programs; and

(4) the number of teachers and aides trained and the frequency, scope, and results of the professional development in approaches and strategies that support second language acquisition.

(c) In addition, for those school districts that filed in the previous year and/or will be filing a bilingual education exception and/or ESL waiver in the current year, the annual district report of educational performance shall also reflect:

(1) the number of teachers for whom an exception or waiver was/is being filed;

(2) the number of teachers for whom an exception or waiver was filed in the previous year who successfully obtained certification; and

(3) the frequency and scope of a comprehensive professional development plan, implemented as required under §89.1207 of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers), and results of such plan if an exception and/or waiver was filed in the previous school year.

(d) School districts shall report to parents the progress of their child in acquiring English as a result of participation in the program offered to English learners.

(e) Each school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in the TEC, §11.253, for the purpose of improving student performance for English learners.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

19 TAC §89.1267, §89.1269

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §29.051, which establishes the policy of the state to ensure equal educational opportunity to students with limited English proficiency through the provision of bilingual education and special language programs in the public schools and supplemental financial assistance to help school districts meet the extra costs of the programs; TEC, §29.053, which outlines requirements for reporting the number of students with limited English proficiency in school districts and explains the criteria for determining whether a district is required to provide bilingual education or special language programs at the elementary and secondary school levels; TEC, §29.054, which describes the application process and documentation requirements for school districts filing a bilingual education exception; TEC, §29.055, which establishes basic requirements in the content and methods of instruction for the state's bilingual education and special language programs; TEC, §29.056, which authorizes the state to establish standardized criteria for the identification, assessment, and classification of students of limited English proficiency and describes required procedures for the identification, placement, and exiting of students with limited English proficiency; TEC, §29.0561, which provides information regarding requirements for the reevaluation and monitoring of students with limited English proficiency for two years after program exit; TEC, §29.057, which requires that bilingual education and special language programs be located in the regular public schools rather than separate facilities, that students with limited English proficiency are placed in classes with other students of similar age and level of educational attainment, and that a maximum student-teacher ratio be set by the state that reflects student needs; TEC, §29.058, which authorizes districts to enroll students who do not have limited English proficiency in bilingual education programs, with a maximum enrollment of such students set at 40% of the total number of students enrolled in the program; TEC, §29.059, which allows school districts flexibility to join other districts to provide services for

students with limited English proficiency; TEC, §29.060, which describes requirements for offering summer school programs for students with limited English proficiency eligible to enter kindergarten or Grade 1 in the subsequent school year; TEC, §29.061, which describes teacher certification requirements for educators serving students with limited English proficiency in bilingual education and special language programs; TEC, §29.062, which authorizes the state to evaluate the effectiveness of programs under TEC, Subchapter B; TEC, §29.063, which explains the roles and responsibilities of the language proficiency assessment committee and describes the composition of its membership; TEC, §29.064, which allows for a parent appeals process; and TEC, §29.066, which provides information regarding a school district's coding of students participating in bilingual education and special language programs through the Texas Student Data System Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§29.051, 29.053-29.056, 29.0561, 29.057-29.063, and 29.066.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2018.

TRD-201802822
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 15, 2018
Proposal publication date: April 20, 2018
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.19

The Texas Medical Board (Board) adopts new §172.19, concerning Sports Team Physician Limited License, without changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1792) and will not be republished.

The new rule applies to out-of-state, non-Texas licensed physicians who are designated or employed as a physician for visiting athletes, athletic teams, sporting-event related individuals participating in sporting events in Texas, and family members of such individuals. The new rule creates an exemption from Texas medical licensure requirements for visiting team physicians who are licensed to practice medicine in the team's home state and who limit care to the team's members, coaches, staff, and family members of such individuals during sporting events held in Texas that last no longer than 21 consecutive days. The new rule will also require a limited license for sporting events that last longer than 21 consecutive days. The rule is being adopted in accordance with the Sunset Advisory Commission's management direction (Staff Report, Final Results, August 2017).

The Board sought stakeholder input through the Licensure Stakeholder Group, which made comments on the suggested changes to the rules that were incorporated in the proposed text.

The Board received a written comment from the Texas Orthopaedic Society in support of the rule. The Board received no other written comments

The new rule is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The rule is also proposed under the authority of Texas Occupations Code Annotated, Chapter 155.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2018.

TRD-201802857
Stephen "Brint" Carlton, J.D.
Executive Director
Texas Medical Board
Effective date: July 18, 2018
Proposal publication date: March 23, 2018
For further information, please call: (512) 305-7016

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §§185.4, 185.6, 185.8, 185.14, 185.17, 185.31

The Texas Medical Board, on behalf of the Texas Physician Assistant Board (Board) adopts amendments to §§185.6, 185.8, 185.14, 185.17, and 185.31, concerning Physician Assistants, without changes to the proposed text as published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 533) and will not be republished. Section 185.4 is adopted with changes to the proposed text as published in the February 2, 2018, issue of the *Texas Register* (43 TexReg 533). Section 185.4 is adopted with a minor grammatical change. The word "and" is removed at the end of subsection (a)(8), and the section will be republished.

The amendments to §185.4, concerning Procedural Rules for Licensure Applicants, eliminate the requirement for applicants to have good moral character and add language requiring applicants to submit to a criminal background check. These changes are based on the passage of SB 1625 (85th Regular Session), which amended §204.153 and §204.1525 of the Physician Assistant Licensing Act. The proposed amendments also eliminate obsolete language referring to "surgeon assistants."

The amendments to §185.6, concerning Annual Renewal of License, change registration of physician assistants to biennial instead of annual. The proposed changes also add language to require applicants to submit to a criminal background check. Finally, the proposed rule changes include new language providing that the Board may refuse to renew a license if the licensee is not in compliance with a Board Order. These changes are based on the passage of SB 1625 (85th Regular Session), which amended

§§204.1525, 204.156 and 204.158 of the Physician Assistant Licensing Act.

The amendments to §185.8, concerning Inactive License, change the reference from "annual" registration to "biennial" registration. These changes are based on the passage of SB 1625 (85th Regular Session), which amended §204.156 of the Physician Assistant Licensing Act.

The amendments to §185.14, concerning Physician Supervision, change the reference from "annual" registration to "biennial" registration. These changes are based on the passage of SB 1625 (85th Regular Session), which amended §204.156 of the Physician Assistant Licensing Act.

The amendments to §185.17, concerning Grounds for Denial of Licensure and for Disciplinary Action, add language that provides the Board may refuse to renew a license if the licensee is not in compliance with a Board Order. These changes are based on the passage of SB 1625 (85th Regular Session), which amended §204.158 of the Physician Assistant Licensing Act.

The amendments to §185.31, concerning Prescriptive Authority Agreements: Minimum Requirements, delete language requiring face to face meetings as part of quality assurance and improvement plans. These changes are based on the passage of SB 1625 (85th Regular Session), which amended §157.0512 of the Medical Practice Act.

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure. The rules are further adopted under the authority of Texas Occupations Code §601.254.

§185.4. Procedural Rules for Licensure Applicants.

(a) Except as otherwise provided in this section, an individual shall be licensed by the board before the individual may function as a physician assistant. A license shall be granted to an applicant who:

(1) submits an application on forms approved by the board;

(2) pays the appropriate application fee as prescribed by the board;

(3) has successfully completed an educational program for physician assistants accredited by the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA), or by that committee's predecessor or successor entities, and holds a valid and current certificate issued by the National Commission on Certification of Physician Assistants ("NCCPA");

(4) certifies that the applicant is mentally and physically able to function safely as a physician assistant;

(5) does not have a license, certification, or registration as a physician assistant in this state or from any other licensing authority that is currently revoked or on suspension or the applicant is not subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant, unless the board takes that fact into consideration in determining whether to issue the license;

(6) is of good professional character as defined under §185.2(8) of this title (relating to Definitions);

(7) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications;

(8) meets any other requirement established by rules adopted by the board;

(9) must pass the national licensing examination required for NCCPA certification within no more than six attempts; and

(10) must pass the jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The jurisprudence examination shall be developed and administered as follows:

(A) The staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination.

(B) Applicants must pass the JP exam with a score of 75 or better within three attempts.

(C) An examinee shall not be permitted to bring medical books, compends, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(D) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(E) An applicant who is unable to pass the JP exam within three attempts must appear before a committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(F) A person who has passed the JP Exam shall not be required to retake the Exam for relicensure, except as a specific requirement of the board as part of an agreed order.

(b) The following documentation shall be submitted as a part of the licensure process:

(1) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) Certification. Each applicant for licensure must submit:

(A) a letter of verification of current NCCPA certification sent directly from NCCPA, and

(B) a certificate of successful completion of an educational program submitted directly from the program on a form provided by the board.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for licensure.

(4) Verification from other states. On request of board staff, an applicant must have any state, in which he or she has ever been

licensed as any type of healthcare provider regardless of the current status of the license, submit to the board a letter verifying the status of the license and a description of any sanctions or pending disciplinary matters. The information must be sent directly from the state licensing entities.

(5) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition needs to be requested from the arresting authority and that authority must submit copies directly to the board.

(6) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter shall be accompanied by supporting documentation including court records, if applicable. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(7) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation;

(8) Additional Documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for licensure must be submitted.

(c) All physician assistant applicants shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced as a physician assistant, has been a student at an acceptable approved physician assistant program, or has been on the active teaching faculty of an acceptable approved physician assistant program, within either of the last two years preceding receipt of an application for licensure. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year. Applicants who are unable to demonstrate active practice on a full time basis may, in the discretion of the board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (4) of this subsection:

(1) completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;

(2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;

(3) remedial education; and

(4) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

(d) The executive director shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may within 20 days of receipt of such notice request a review of the executive director's recommendation by a committee of the board, to be conducted in accordance with §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility), and the executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefore, shall be submitted to the board. The applicant shall be notified of the panel or committee's determination and given the option to appeal the determination of ineligibility to the State Office of Administrative Hearings (SOAH) or accept the determination of ineligibility. An applicant has 20 days from the date the applicant receives notice of the board's determination of ineligibility to submit a written response to the board indicating one of those two options. If the applicant does not within 20 days of receipt of such notice submit a response either accepting the determination of ineligibility or providing notice of his or her intent to appeal the determination of ineligibility, the lack of such response shall be deemed as the applicant's acceptance of the board's ineligibility determination. If the applicant timely notifies the board of his or her intent to appeal the board's ineligibility determination to SOAH, a contested case before SOAH will be initiated only in accordance with §187.24 of this title (relating to Pleadings). The applicant shall comply with all other provisions relating to formal proceedings as set out in this title Chapter 187 Subchapter C (relating to Formal Board Proceedings at SOAH). If the applicant does not timely comply with such provisions, or if prior to the initiation of a contested case at SOAH, the applicant withdraws his or her notice of intent to appeal the board's ineligibility determination to SOAH, the applicant's failure to take timely action or withdrawal shall be deemed acceptance of the board's ineligibility determination. The committee may refer any application for determination of eligibility to the full board. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act. The board may disclose such reports to appropriate licensing authorities in other states.

(e) Applicants for licensure:

(1) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(2) who in any way falsify the application may be required to appear before the board;

(3) on whom adverse information is received by the board may be required to appear before the board;

(4) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) must have the application of licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to being considered by the board for licensure, as required by §185.7 of this title (relating to Temporary License);

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.

(f) Alternative License Procedure for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) holds an active unrestricted physician assistant license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas physician assistant license; or

(B) within the five years preceding the application date held a physician assistant license in this state.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described in this subsection after reviewing the applicant's credentials.

(4) Applications for licensure from applicants qualifying under paragraphs (1) and (2) of this subsection shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under paragraphs (1) and (2) of this subsection:

(A) in demonstrating compliance with subsection (d) of this section must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced as a physician assistant, has been a student at an acceptable approved physician assistant program, or has been on the active teaching faculty of an acceptable approved physician assistant program, within one of the last three years preceding receipt of an Application for licensure;

(B) notwithstanding the one year expiration in subsection (e)(1) of this section, are allowed an additional 6 months to complete the application prior to it becoming inactive; and

(C) notwithstanding the 20 day deadline in subsection (e)(6) of this section, may be considered for permanent licensure up to 5 days prior to the board meeting.

(g) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall, with respect to an applicant who is a military service member or military veteran as defined in §185.2 of this title (relating to Definitions), credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a physician assistant license suspended or revoked by another state or a Canadian province;

(B) holds a physician assistant license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

(h) Re-Application for Licensure Prohibited. A person who has been determined ineligible for a license by the Licensure Committee may not reapply for a license prior to the expiration of one year from the date of the Board's ratification of the Licensure Committee's determination of ineligibility and denial of licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2018.

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Stephen "Brint" Carlton, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) adopts amendments to §190.8, concerning Violation Guidelines, and §190.14, concerning Disciplinary Sanction Guidelines, with non-substantive changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1555). The text of the rules will be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules after a meeting held on November 16, 2017. The comments were incorporated into the proposed rules. Changes in the published rule, summarized below, respond to public comments or otherwise reflect non-substantive variations from the published rule. General Counsel Scott Freshour advises that the changes to the rules affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will not be more burdensome than under the proposed rules as published. The amendments will be republished.

The amendment to §190.8(6)(B) amends the rule to clarify that the Board will consider a misdemeanor to be a misdemeanor of

moral turpitude if that type of misdemeanor has been found by a Texas Court to be a misdemeanor of moral turpitude; if the conviction involves dishonesty, fraud, deceit, misrepresentation, or violence; or if the conviction reflects adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license. The rule also eliminates the word "deliberate" from the phrase "deliberate violence."

The amendment to §190.14 revises the chart to ensure that references to violations under Texas Occupation Code §164.053(a)(6) are referenced in the same section with violations under §164.053(a)(5).

The Board Received comments on the rules from the Texas Medical Association (TMA).

§190.8:

Comment: The TMA commented that it supported the proposed rule change allowing reliance on Texas Court's interpretation of what constitutes a misdemeanor of moral turpitude. The TMA additionally suggested clarifying that previous determinations by Texas Courts govern whether a crime is a crime of moral turpitude unless Texas Courts have not ruled on as a specific misdemeanor is a crime of moral turpitude. The TMA further comments that it opposes the Board's deletion of "deliberate" from the phrase "deliberate violence." The TMA believes that removing the requirement that a crime be a crime of "deliberate violence" rather than a crime of violence would expand the scope of misdemeanors involving moral turpitude.

Response: The Board agrees with the TMA comments that Texas court precedent should be the primary determiner of whether a crime constitutes a crime of moral turpitude and clarified this by re-organizing the format of the rule and adding the sentence "Those misdemeanors found by state courts in Texas not to be crimes of moral turpitude are not misdemeanors of moral turpitude within the act." The Board disagrees with the TMA that "deliberate violence" is an appropriate standard for evaluating a crime of moral turpitude. "Deliberate violence" is not a term that is used anywhere in the Texas Penal Code of Criminal Procedure and not included as an element in any misdemeanor crime in Texas. Further, any potential TMB finding that a misdemeanor of violence constitutes a crime of moral turpitude will be constrained by state court precedent. Accordingly, the Board will not incorporate TMA's suggestion to allow the word "deliberate" to remain in the phrase "deliberate violence."

§190.14:

Comment: The TMA comments that the Board possibly intended for the distinction related to prior Board disciplinary history to appear in both sets of violations for nontherapeutic prescribing under §164.053(a)(5) and (a)(6).

Response: The Board agrees with the TMA that the provisions related to prior disciplinary history for standard of care violations were intended to be included in both sections and accordingly adds the phrases related to prior disciplinary history accordingly.

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a valid practitioner-patient relationship. Establishing a practitioner-patient relationship is not required for:

(i) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(ii) a physician to prescribe dangerous drugs and/or vaccines for post-exposure prophylaxis of disease for close contacts of a patient if the physician diagnoses the patient with one or more of the following infectious diseases listed in subclauses (I) - (VII) of this clause, or is providing public health medical services pursuant to a memorandum of understanding entered into between the board and the Department of State Health Services. For the purpose of this clause, a "close contact" is defined as a member of the patient's household or any person with significant exposure to the patient for whom post-exposure prophylaxis is recommended by the Centers for Disease Control and Prevention, Texas Department of State Health Services, or local

health department or authority ("local health authority or department" as defined under Chapter 81 of the Texas Health and Safety Code). The physician must document the treatment provided to the patient's close contact(s) in the patient's medical record. Such documentation at a minimum must include the close contact's name, drug prescribed, and the date that the prescription was provided.

(I) Influenza;

(II) Invasive Haemophilus influenzae Type B;

(III) Meningococcal disease;

(IV) Pertussis;

(V) Scabies;

(VI) Varicella zoster; or

(VII) a communicable disease determined by the Texas Department of State Health Services to:

(-a-) present an immediate threat of a high risk of death or serious long-term disability to a large number of people; and

(-b-) create a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(O) delegating the performance of nerve conduction studies to a person who is not licensed as a physician or physical therapist without:

(i) first selecting the appropriate nerve conductions to be performed;

(ii) ensuring that the person performing the study is adequately trained;

(iii) being onsite during the performance of the study; and

(iv) being immediately available to provide the person with assistance and direction.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body as defined under §160.001 of the Act regarding statements used in an active investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant, witness, medical peer review committee member, or professional review body if the contact is in the normal course of business and unrelated to the investigation.

(T) failing to timely submit complete forms for purposes of registration as set out in §166.1 of this title (relating to Physician Registration) when it is the intent of the licensee to maintain licensure with the board as indicated through submission of an application and fees prior to one year after a permit expires.

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of §164.051(a)(7) the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of §164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of §164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to §160.052 of the Act or otherwise.

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

(A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, §204.303(a)(2) of the Physician Assistant Act, and §203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with §164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with §164.057(b) of the Act.

(B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of §164.051(a)(2) of the Medical Practice Act and §205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations, the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice location of the physician;

(III) involves a patient or former patient;

(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for or any financial arrangement regarding any medical service;

(v) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those which:

(I) have been found by Texas state courts to be misdemeanors of moral turpitude;

(II) involve dishonesty, fraud, deceit, misrepresentation, violence; or

(III) reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

(vi) Those misdemeanors found by state Texas courts not to be crimes of moral turpitude are not misdemeanors of moral turpitude within the meaning of the Act.

(C) In accordance with §164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

(7) Violations of the Health and Safety Code. In accordance with §164.055 of the Act, the Board shall take appropriate disciplinary action against a physician who violates §170.002 or Chapter 171, Texas Health and Safety Code.

(8) For purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.) constitutes excessive use of such substance.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§190.14. Disciplinary Sanction Guidelines.

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined in paragraph (9) of this section provide a range from "Low Sanction" to "High Sanction" based upon any aggravating or mitigating factors that are found to apply in a particular case. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §190.15 of this chapter (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The minimum sanctions outlined in paragraph (9) of this section are applicable to first time violators. In accordance with §164.001(g)(2) of the Act, the board shall consider revoking the person's license if the person is a repeat offender.

(3) The sanctions outlined in paragraph (9) of this section are based on the conclusion stated in §164.001(j) of the Act that a violation related directly to patient care is more serious than one that involves only an administrative violation. An administrative violation may be handled informally in accordance with §187.14(7) of this title (relating to Informal Resolutions of Violations). Administrative violations may be more or less serious, depending on the nature of the violation. Administrative violations that are considered by the board to be more serious are designated as being an "aggravated administrative violation."

(4) The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to $5,000 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(5) Each statutory violation constitutes a separate offense, even if arising out of a single act.

(6) If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced.

(7) Any panel action that falls outside the guideline range shall be reviewed and voted on individually by the board at a regular meeting.

(8) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions outlined in this rule.

(9) The following standard sanctions shall apply to violations of the Act:
Figure: 22 TAC §190.14(9)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 198. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS

The Texas Medical Board (Board) adopts amendments to §§198.1 - 198.4, and new §198.5 and §198.6. Sections 198.1, 198.3 and 198.6 are adopted without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2113) and will not be republished. Sections 198.2, 198.4 and 198.5 are adopted with changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2113). The text of the rules will be republished.

The Board sought stakeholder input at the Stem Cell Stakeholder Group meetings on October 18, 2017, and on February 13, 2018, where stakeholders made comments on and suggested changes to the rules. The comments were incorporated into the proposed rules.

The Board amends Chapter 198 by dividing Chapter 198 into two separate subchapters, creating Subchapter A, Standards for Use of Investigational Drugs, Biological Products, or Devices. The purpose is to distinguish the applicability of the provisions contained in Subchapter A and those provisions contained in Subchapter B. Subchapter A contains §§198.1 - 198.4.

The Board adopts Subchapter B, Investigational Stem Cell Treatments for Patients With Certain Severe Chronic Diseases or Terminal Illnesses, which contains new §198.5 and §198.6, to distinguish the provisions contained therein with those provisions contained in Subchapter A.

The amendment to §198.1, concerning Purpose, removes the word "agents" and replaces it with the terms "drugs, biological products, or devices" in order to align with statutory language contained in Health and Safety Code Chapter 489. It also includes new language to distinguish the applicability of Subchapter A and to differentiate Subchapter B.

The amendment to §198.2, concerning Definitions, removes the definition of "investigational agent" and defines the terms "drugs, biological products, or devices" and "terminal illness." These proposed changes are consistent with the definitions and terms used in the Texas Health and Safety Code Chapter 489. The proposed changes also include limiting language to clarify that such definitions are not applicable to Subchapter B.

The amendment to §198.3, concerning Practice Guidelines for the Use of Investigational Agents, removes the term "agent" throughout the section and includes the terms "drugs, biological products, or devices" in line with statutory language contained in Health and Safety Code, Chapter 489.

The amendment to §198.4, concerning Use of Investigational Drugs, Biological Products, or Devices for Patients with Terminal Illnesses, changes the title of this section by removing the term "agent" and replacing it with the terms "drugs, biological products, or devices" in order to correspond with statutory terms in Chapter 489 of the Texas Health and Safety Code. The remainder of this section is deleted, as it is contained in Chapter 489 of the Health and Safety Code.

New §198.5, concerning Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses, implements the requirements of House Bill 810, 85th Leg. R.S. (2017) which establishes the regulation of investigational stem cell treatments in Texas as set forth in Chapter 1003 of the Texas Health and Safety Code.

New §198.6, concerning Process and Procedures for IRBs Engaged in the Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses, implements the requirements of House Bill 810, 85th Leg. R.S. (2017) which establishes the regulatory framework to allow investigational stem cell treatments in Texas through statutory changes in Chapter 1003 of the Texas Health and Safety Code.

SUMMARY OF COMMENTS. The Board received public written comments from Texans for Cures, an anonymous comment submitted through Cameron Duncan, and the Texas Hospital Association. Representative Tan Parker submitted public comments prior to the February 13, 2018, stakeholder meeting and several changes were made prior to publication of the proposed rule.

§198.1:

The Board received no public written comments and no one appeared to testify at the public hearing held on June 15, 2018.

§198.2:

A Representative commented that the definition of investigational drug should include the phrase "and remains under investigation in the clinical trial" in order to be consistent with the language of HB21 from the 84th legislative session.

Board Response: The Board has added this language to the definition of " investigational drug, biological product, or device" in order to be consistent with statutory language.

An individual submitted a comment on behalf of Right to Know commenting that the language is too broad any may interfere with the administration of over-the-counter medication.

Board Response: The Board declines to adopt the recommendations. The changes to Subchapter A are adopted in order to be consistent with the statutory language and are not an expansion or contraction of current regulatory authority.

§198.3:

The Board received one public written comment and no one appeared to testify at the public hearing held on June 15, 2018.

An individual submitted a comment on behalf of Right to Know commenting that the language is too broad any may interfere with the administration of over-the-counter medication.

Board Response: The Board declines to adopt the recommendations. The changes to Subchapter A are adopted in order to be consistent with the statutory language and are not an expansion or contraction of current regulatory authority.

§198.4:

The Board received no public written comments and no one appeared to testify at the public hearing held on June 15, 2018. However, a minor grammatical change is made. The word "remains" is changed to be singular, "remain".

§198.5:

The Board received two public written comments and no one appeared to testify at the public hearing held on June 15, 2018.

Texans for Cures commented that the Medical Board should have a single Institutional Review Board (IRB) for all stem cell clinical trials in Texas. The language should also be more specific, within the protection of HIPPA guidelines.

TMB Response: The TMB has considered the possibility of a single IRB for all physicians who are certified to administer stem cells in Texas. However HB810 does not give the TMB the authority through rulemaking to either create a universal stem cell IRB or to choose an existing entity to take on these responsibilities.

Texas Hospital Association states that the title of Subchapter B should be changed from "Diagnoses" to "Diseases" in order to be consistent with the statutory language. §198.5(c), the Texas Hospital Association states, contains a grammatical typo. §198.5(e), the Texas Hospital Association states, is unclear in its meaning. §198.5(e)(3), the Texas Hospital Association states, is difficult to reconcile with Texas Health and Safety Code §1003.055 and should be changed for clarity. Texas Hospital Association also proposes language to specify that affiliated hospitals licensed under Chapter 241 should have at least 150 beds and to include the eligible facilities instead of referencing statutory language.

TMB Response: The TMB agrees that Subchapter B should be changed from "Diagnoses" to "Diseases" in order to be consistent with the statutory language and TMB has made this nonsubstantive change to the final rule.

The TMB agrees with the Texas Hospital Associations comment regarding §198.5(c) and has corrected this typo.

§198.5(e) has been edited to clarify that the informed consent document signed by eligible patients must include language stating that the patient and the treating physician have considered and discussed all other federally approved treatment options and that the physician has determined that those treatment options are unavailable or unlikely to alleviate the patient's significant impairment or severe pain associated with the severe chronic disease or terminal illness. Texas Health and Safety Code §1003.053(2)(A) requires that all other federally approved treatment options be unavailable or most likely unsuccessful for a patient to be eligible to receive stem cell therapy in Texas under Chapter 198, Subchapter B. This language must be included in the informed consent document signed by the patient prior to any treatment by a certified physician. Although not explicitly included in the rule, a certified physician administering stem cells in Texas must keep a complete and accurate medical record. Here, this would include among other items, documentation of informed consent from the patient, documentation of all the required elements to establish that a patient is eligible to receive stem cell therapy, and documentation of the physician's consideration of other possible treatment options.

§198.5(e)(3) has not been changed in response to this comment. The language in this section is intended to clarify what entities, in addition to IRBs, may certify a physician. Texas Health and Safety Code §1003.055 states that a qualifying IRB may certify a physician to administer stem cell therapy in Texas as part of a clinical trial. The statute does not limit the certifying body to only qualifying IRBs. The Board rule clarifies that the entity with which a qualifying IRB is connected, as required by Texas Health and Safety Code §1003.055(d), may also certify a physician who will be administering stem cell treatments as part of the clinical trial overseen by the qualifying IRB. Thus the medical school or hospital connected to the qualifying IRB could utilize already established credentialing criteria to ensure that the physicians administering stem cell treatments to Texas patients, under the oversight of the IRB, are doing so in a safe and competent manner that is protective of Texas citizens. Although requiring that a hospital have at least 150 beds may possibly lead to a more thorough review of affiliated IRBs and more thorough processes for certifying physicians as discussed at the stakeholder meetings, there is no basis for this additional requirement in statutory authority.

The TMB declines to make changes to §198.5(e)(4) in the interest of ensuring that the rule is consistent with the statutory authority granted to the TMB to engage in this rulemaking.

§198.6:

The Board received one public written comment and no one appeared to testify at the public hearing held on June 15, 2018.

An anonymous comment states that the reporting requirements for IRBs are different from current IRB reporting requirements and could be burdensome to IRBs.

TMB Response: HB810 states that IRBs overseeing clinical trials involving the administration of stem cells must keep a record on each person who receives stem cells and the effects of the stem cell treatment. The statute also requires that the IRB report this information annually to the TMB. TMB's annual reporting requirements are intended to ensure that the annual IRB report has enough information to effectuate the will of the legislature to gather information about the administration of stem cell therapies within a clinical trial as allowed by HB810.

SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES

22 TAC §§198.1 - 198.4

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also adopted under the authority of §164.003(i) of the Texas Occupations Code.

§198.2. Definitions.

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

(1) Investigational drug, biological product, or device--A drug, biological product, or device that is not approved or licensed by the Food and Drug Administration (FDA) for use in humans and remains under investigation in a clinical trial. Investigational drugs, biological products, and devices may be used for the purposes of prevention, treatment, diagnosis or for relieving symptoms of a disease. An investigational drug, biological product or device shall not include:

(A) a drug, biological product, device, diagnostic product or treatment regimen approved by the FDA, but used for off-label purposes;

(B) a drug, biological product, device, diagnostic product or treatment regimen which is already approved for use by an existing Institutional Review Board (IRB);

(C) products processed or manufactured as human cell, tissue or cellular-or-tissue-based product ("HCT/P") pursuant to Sections 351 and 361 of the Public Health Service Act ("PHSA") (42 U.S.C. 264); or

(D) a drug, device or biological product pursuant to the federal Food Drug and Cosmetic Act (FDCA).

(2) Terminal illness--An advanced stage of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

(b) These definitions do not apply to Subchapter B of this title (relating to Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses).

§198.4. Use of Investigational Drugs, Biological Products, or Devices for Patients with Terminal Illnesses.

Investigational drugs, biological products, or devices which meet the criteria enumerated in §198.2, of this title (relating to Definitions) and have successfully completed phase one of a clinical trial and remain under investigation in the clinical trial shall be administered and provided to patients with terminal illnesses in accordance with applicable law, including Chapter 489 of the Texas Health and Safety Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES

22 TAC §198.5, §198.6

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The new rules are also adopted under the authority of §164.003(i) of the Texas Occupations Code.

§198.5. Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.

(a) The Legislature recognizes the need for patient access to innovative medical treatments. At the same time, the health and welfare of Texas citizens must be protected. These goals must be carefully balanced.

(b) The purpose of this subchapter is to set out the requirements for a patient to be eligible for consideration of receiving investigational stem cell treatment and under what circumstances a certified physician may administer or provide investigational stem cell treatments. The implementation of this rule is contingent upon qualifying chronic diseases or terminal illness being defined, as set out in §1003.052 of the Texas Health and Safety Code.

(c) This rule does not require an eligible patient to receive such treatment, but rather the statute sets the eligibility standards and the parameters under which treatment may be provided to an individual with a qualifying severe chronic disease or terminal illness.

(d) Stem cell treatments which are under investigation in a clinical trial and being administered to human participants:

(1) may be administered or provided to eligible patients with qualifying terminal illnesses or severe chronic diseases as defined by the executive commissioner of the Health and Human Services Commission; and

(2) must be done in compliance with applicable law.

(e) In order for a patient to be eligible to receive treatment with investigational stem cells, the eligible patient must:

(1) be enrolled in a clinical trial investigating the use of adult stem cells in humans;

(2) sign a written informed consent, before receiving treatment, which includes documentation of compliance with §1003.053(2)(a) of the Texas Health and Safety Code;

(3) receive treatment from a physician certified under §1003.055 of the Texas Health and Safety Code by:

(A) a qualifying IRB;

(B) a medical school as defined by §61.501 of the Education Code; or

(C) a hospital licensed under Chapter 241 of the Texas Health and Safety Code; and

(4) receive treatment in a qualifying facility under §1003.055 of the Texas Health and Safety Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 106. PERMITS BY RULE
SUBCHAPTER V. THERMAL CONTROL DEVICES

30 TAC §106.494

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §106.494 *with changes* to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2943) and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Senate Bill (SB) 8, 85th Texas Legislature, 2017, amended Texas Health and Safety Code (THSC) by adding THSC, Chapter 697, relating to the disposition of embryonic and fetal tissue remains. Under SB 8: THSC, §697.002 (Definitions), defined the term "Embryonic and fetal tissue remains"; THSC, §697.003 (Applicability of Other Law), stated that embryonic and fetal tissue remains are not considered pathological waste under state law; and THSC, §697.003, stated that unless otherwise provided by this chapter, THSC, Chapter 711 (General Provisions Relating to Cemeteries), Chapter 716 (Crematories), and Texas Occupations Code, Chapter 651 (Cemetery and Crematory Services, Funeral Directing, and Embalming), do not apply to the disposition of embryonic and fetal tissue remains. Additionally, SB 8 requires health care facilities to ensure that embryonic and fetal tissue remains that are passed or delivered at the facility are disposed by interment, cremation, incineration followed by interment, or steam disinfection followed by interment. SB 8 became effective on September 1, 2017; however, THSC, Chapter 697, as added by SB 8 applies only to the disposition of embryonic and fetal tissue remains that occurs on or after February 1, 2018. The disposition of embryonic and fetal tissue

remains that occurs before February 1, 2018, is governed by the law in effect immediately before the effective date of SB 8.

While the legislation does not require TCEQ to adopt any rules to implement SB 8, revisions to Chapter 106 are necessary to align TCEQ definitions with those in SB 8 and other references to 25 TAC Chapter 1, Miscellaneous Provisions, which are under the jurisdiction of the Texas Department of State Health Services (DSHS) and the Texas Health and Human Services Commission (HHSC).

The legislation requires the executive commissioner of HHSC to adopt any rules necessary to implement THSC, Chapter 697 no later than December 1, 2017. At the time of this rulemaking, HHSC has adopted new 25 TAC Chapter 138, Disposition of Embryonic and Fetal Tissue Remains (*See* January 26, 2018, issue of the *Texas Register* (43 TexReg 465)) and DSHS has adopted amendments to 25 TAC Chapter 1 to implement SB 8 which were effective on May 24, 2018, (*See* May 18, 2018, issue of the *Texas Register* (43 TexReg 3242)).

In order to adhere to the directives of the legislature and maintain consistency with the regulations of DSHS and HHSC, TCEQ initiates this rulemaking adoption to revise §106.494.

Under §106.494, crematories and non-commercial incinerators which meet the conditions of this section and which are used to dispose of pathological waste, human remains, and carcasses are permitted by rule. Under existing §106.494, certain defined terms in the section refer to the terms as defined in THSC, §711.001, and 25 TAC §1.132, Definitions. At the time this rulemaking was proposed, the terms as defined in THSC, §711.001, and 25 TAC §1.132 were not consistent with new THSC, §697.003 and §697.004.

Specifically, §106.494 defined "Pathological waste" by referencing 25 TAC §1.132 and restating the definitional language, in slightly different form, found in 25 TAC §1.132; 25 TAC §1.132 and §106.494 stated this term includes products of spontaneous or induced human abortions, including tissues and fetuses. The definition "Crematory" under §106.494 referred to the definition in THSC, §711.001, which specified the use of the crematory furnace is for the cremation of human remains. The definition "Human remains" is also defined under §106.494 and refers to the definition in THSC, §711.001. Under SB 8, and as specified by newly added THSC, §697.002 and §697.003, "Embryonic and fetal tissue remains" are specifically not pathological waste and THSC, Chapters 711 and 716 are not applicable to the disposition of embryonic and fetal tissue remains. Current state law, as enacted by SB 8, provides for cremation of embryonic and fetal tissue remains as a form of disposition of those remains. The commission is adopting this rulemaking to conform its rule to SB 8 and remove all references that would define embryonic and fetal tissue remains as pathological waste. The amendment to §106.494 clarifies that a facility operating under §106.494 is authorized to burn any materials meeting the definition of "Embryonic and fetal tissue remains," whether done by a non-commercial incinerator, or by a crematory used for the cremation of human remains.

No technical requirements, design requirements, or operational conditions under §106.494 are affected as part of this rulemaking. The rulemaking is not expected to result in any change to current authorizations under §106.494, and therefore, the commission is not requiring any facility currently authorized by this permit by rule to re-register the facility.

Section by Section Discussion

§106.494, Non-commercial Incinerators and Crematories

The commission adopts the amended title of §106.494, from "Pathological Waste Incinerators" to "Non-commercial Incinerators and Crematories" to clarify the types of facilities authorized under this permit by rule.

The commission adopts amended §106.494(a)(1), which defined "Pathological waste" by specifying the term is as defined in 25 TAC §1.132 and also listed materials that are included in that definition under §106.494(a)(1)(A) - (D). As mentioned earlier in the Background and Summary of the Factual Basis for the Adopted Rule section of this preamble, DSHS adopted amendments to 25 TAC §1.132 to conform to SB 8. "Pathological waste," as it was previously defined in §106.494(a)(1)(A) - (D), closely mirrored the definition and materials listed under the previous 25 TAC §1.132(42)(A) - (D). Previously under §106.494(a)(1)(B), and corresponding 25 TAC §1.132(42)(B), "Pathological waste" was defined as including products of spontaneous or induced human abortions including body parts, tissues, fetuses, organs, and bulk blood and body fluids.

In accordance with SB 8 and THSC, §697.003, embryonic and fetal tissue remains are not pathological waste under state law. Therefore, the commission adopts the deletion of all the materials that are considered to be pathological waste under §106.494(a)(1)(A) - (D), and adopts a minor rephrasing of §106.494(a)(1) to clarify that the definition of "Pathological waste" will have the meaning as it is defined in 25 TAC §1.132, which has been amended to comply with SB 8. The amendment to §106.494(a)(1) aligns with the changes to 25 TAC §1.132 adopted by the executive commissioner of HHSC. Both amendments are being made in concurrent, but separate, rulemakings to comply with state law. As such, the term will still capture all other materials listed under the definition and continue to align the commission's definition of "Pathological waste" with any subsequent changes to the definition made under 25 TAC §1.132.

The commission adopts §106.494(a)(3) to add the definition of "Embryonic and fetal tissue remains" and to specify that the term is prescribed the meaning given in THSC, §697.002. The commission also adopts additional language to clarify, consistent with THSC, §697.004, the umbilical cord, placenta, gestational sac, blood, or body fluids from the same pregnancy may be disposed of in the same manner as embryonic and fetal tissue remains. The adoption of amended §106.494(a)(3) is necessary to reflect the addition of THSC, §697.002 and §697.004, as enacted by SB 8, and the adopted changes in §106.494(a)(5) and (7), and (b), (b)(2)(E), and (G). The commission also adopted renumbered §106.494(a)(3) as §106.494(a)(4) and renumbered subsequent existing §106.494(a)(4) - (7) as §106.494(a)(5) - (8) to accommodate the adopted changes to §106.494(a)(3).

The commission adopts renumbered §106.494(a)(5). Under the previous §106.494(a)(4), "Crematory" is defined under THSC, §711.001 as a structure containing a furnace used or intended to be used for the cremation of human remains. The term "Human remains" within this definition restricts a crematory from cremating "Embryonic and fetal tissue remains" since both terms are assigned their own individual definitions and do not overlap. "Crematory" is defined in 25 TAC §1.132 as being used for the reduction (by burning) of pathological waste. "Crematory" is defined in 25 TAC §138.2 as being used for the reduction (by burning) of human remains or embryonic and fetal tissue remains.

The adopted amendment removes the existing reference to THSC, §711.001, from the definition of "Crematory" and clarifies the definition to be consistent with the definition under the DSHS and HHSC rules. It clarifies that crematory furnace(s) are used for the reduction (by burning) of human remains, and/or embryonic and fetal tissue remains.

The commission adopts renumbered §106.494(a)(7) to clarify that a non-commercial incinerator includes an incinerator which does not accept for monetary compensation embryonic and fetal tissue remains generated off-site.

The commission adopts amended §106.494(b) to specify that crematories and non-commercial incinerators which are used to cremate embryonic and fetal tissue remains are required to meet the conditions of this section to be permitted by rule. This change is necessary to maintain consistency with the addition of THSC, §§697.002 - 697.004, enacted by SB 8, and with adopted changes to §106.494(a)(5) and §106.494(b)(2)(G).

The commission adopts amended §106.494(b)(2)(E) to add language to clarify the types of materials which are authorized to be cremated by incinerators installed and operated under this section.

The commission adopts amended §106.494(b)(2)(G) to add language to clarify that embryonic and fetal tissue remains are authorized to be cremated using a crematory. The commission also adopts additional language regarding the disposition of embryonic and fetal tissue remains. The adopted change is necessary to be consistent with THSC, Chapter 697, enacted by SB 8, and with the adopted changes to §106.494(a)(5).

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the Draft Regulatory Impact Analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirements to prepare a Regulatory Impact Analysis (RIA).

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Therefore, the adopted amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a RIA is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and does not exceed a requirement of a delegation agreement or contract to implement a state or federal program. Finally, this rulemaking is not adopted solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority of this preamble.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by SB 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full RIA unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule adopted by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. The commission contends that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. Any impact the adopted rule may have is no greater than is necessary or appropriate to meet the requirements of the Federal Clean Air Act and, in fact, creates no additional impacts since the adopted rule does not exceed the requirement to attain and maintain the National Air Ambient Quality Standards. For these reasons, the adopted rule falls under the exception in Texas Government Code, §2001.0225(a), because it is required by, and does not exceed, federal law.

The commission consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Berry v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000, no writ); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission substantially complied with the requirements of Texas Government Code, §2001.0225.

The purpose of the adopted amendment to the permit by rule is to align definitions in the permit by rule with the statutory changes required by SB 8. The adopted amendment was not developed solely under the general powers of the agency, but is authorized by specific sections of the THSC, Chapter 382, and the Texas Water Code, which are cited in the Statutory Authority sections of this preamble. Therefore, this adopted rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received regarding the draft regulatory impact analysis.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part, or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25% 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 with the market value of the property as if the governmental action is in effect.

The commission completed a takings impact analysis for the adopted rulemaking action under Texas Government Code, §2007.043. The primary purpose of this adopted rulemaking action, as discussed elsewhere in this preamble, is to adhere to the directives of the legislature, and maintain consistency with the regulations of the DSHS and HHSC. The adopted rulemaking action will not create any additional burden on private real property. The adopted rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the consistency with the coastal management program.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 106 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. This rulemaking would not directly affect existing authorized sources unless those sources are modified and require new authorization or make changes to their operation that require them to re-register their authorization. As noted previously in this preamble, this rulemaking is not expected to result in any change to current authorizations under §106.494, and therefore, the commission is not requiring any facility currently authorized by this permit by rule to re-register the facility.

Public Comment

The commission offered a public hearing on June 4, 2018. The comment period closed on June 12, 2018. The commission received comments from Texas Values.

Response to Comments

Comment

Texas Values commented that the proposed preamble implies that a crematory operating under an existing §106.494 registration would need to re-register before it could start accepting embryonic and fetal tissue remains. Texas Values stated that this is inconsistent with other statements in the proposed preamble that assert that this rulemaking would not directly affect existing authorized sources unless those sources are modified and require new authorization or make changes to their operation that require them to re-register their authorization.

Response

The commission has evaluated the permit by rule registering requirements in conjunction with the acknowledgement that this rulemaking does not change any technical requirements, design requirements, or operational conditions under §106.494, or change the character of the authorized emissions. Based on this evaluation, and as noted earlier in this preamble, the commission has determined that a crematory operating under an existing §106.494 registration would not need to re-register before it could begin accepting embryonic and fetal tissue remains.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's

purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; and THSC, §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The adopted amendment implements THSC, §§382.001, 382.002, 382.051, 382.05196, and 697.002 - 697.004.

§106.494. Non-commercial Incinerators and Crematories.

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

(1) Pathological waste --This term is assigned the meaning as defined in 25 TAC §1.132 (relating to Definitions)

(2) Human remains (as defined in Texas Health and Safety Code, §711.001)--The body of decedent.

(3) Embryonic and fetal tissue remains--This term is assigned the meaning as defined in Texas Health and Safety Code, §697.002. The umbilical cord, placenta, gestational sac, blood, or body fluids from the same pregnancy may be disposed of in the same manner as embryonic and fetal tissue remains in accordance with Texas Health and Safety Code, §697.004.

(4) Carcasses--Dead animals, in whole or part.

(5) Crematory --A building or structure containing one or more furnaces used, or intended to be used, for the reduction (by burning) of human remains, and/or embryonic and fetal tissue remains to cremated remains.

(6) Animal feeding operations--A lot or facility (other than an aquatic animal feeding facility or veterinary facility) where animals are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season.

(7) Non-commercial incinerator--An incinerator which does not accept pathological waste, embryonic and fetal tissue remains, or carcasses generated off-site for monetary compensation.

(8) Stack height--Elevation of the stack exit above the ground.

(b) Conditions of permit by rule. Crematories used for the cremation of human remains, embryonic and fetal tissue remains, and appropriate containers which meet the following conditions of this section are permitted by rule. Non-commercial incinerators used to dispose of pathological waste, embryonic and fetal tissue remains, and carcasses which meet the following conditions of this section are permitted by rule. Incinerators used in the recovery of materials are not covered by this section.

(1) Design requirements.

(A) The manufacturer's rated capacity (burn rate) shall be 200 pounds per hour (lbs/hr) or less.

(B) The incinerator shall be a dual-chamber design.

(C) Burners shall be located in each chamber, sized to manufacturer's specifications, and operated as necessary to maintain the minimum temperature requirements of subparagraphs (D) or (E) of this paragraph at all times when the unit is burning waste.

(D) Excluding crematories, the secondary chamber must be designed to maintain a temperature of 1,600 degrees Fahrenheit or more with a gas residence time of 1/2 second or more.

(E) In lieu of subparagraph (D) of this paragraph, incinerators at animal feeding operations that:

(i) are used to dispose of carcasses generated on-site; and

(ii) are located a minimum of 700 feet from the nearest property line, shall be designed to maintain a secondary chamber temperature of 1,400 degrees Fahrenheit or more with a gas residence time of 1/4 second or more. Alternatively, incinerators may be located in accordance with Table 494 of this clause, provided the total manufacturer's rated capacity (burn rate) of all units located less than 700 feet from a property line shall not exceed 200 lb/hr. Setback distances shall be measured from the stack exit.

Figure: 30 TAC §106.494(b)(1)(E)(ii) (No change.)

(F) There shall be no obstructions to stack flow, such as by rain caps, unless such devices are designed to automatically open when the incinerator is operated. Properly installed and maintained spark arresters are not considered obstruction.

(2) Operational conditions.

(A) Before construction begins, the facility shall be registered with the commission using Form PI-7.

(B) The manufacturer's recommended operating instructions shall be posted at the unit and the unit shall be operated in accordance with these instructions.

(C) The opacity of emissions from the incinerator shall not exceed 5.0% averaged over a six-minute period.

(D) Heat shall be provided by the combustion of sweet natural gas, liquid petroleum gas, or Number 2 fuel oil with less than 0.3% sulfur by weight, or by electric power.

(E) Incinerators installed and operated in accordance with the conditions of this section shall not be used to dispose of any medical waste, other than pathological waste, embryonic and fetal tissue remains, and/or carcasses, as defined under subsection (a) of this section.

(F) Incinerators installed and operated in accordance with the conditions of this section shall also meet the requirements of §§111.121, 111.125, 111.127, and 111.129 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators; Testing Requirements; Monitoring and Recordkeeping Requirements; and Operating Requirements).

(G) Crematories shall be used for the sole purpose of cremation of human remains, embryonic and fetal tissue remains, as well as the umbilical cord, placenta, gestational sac, blood, or body fluids in accordance with Texas Health and Safety Code, §697.004, and appropriate containers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2018.

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS

30 TAC §305.541

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §305.541.

The amendments to §305.541 are adopted *without change* to the proposed text as published in the February 9, 2018, issue of the *Texas Register* (43 TexReg 715) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking is necessary to adopt by reference new dental office pretreatment standards, which were adopted by the United States Environmental Protection Agency (EPA) in 40 Code of Federal Regulations (CFR) Part 441 and became effective on July 14, 2017.

The new federal regulations create technology-based pretreatment standards to reduce the discharge of mercury-containing dental amalgam to publicly owned treatment works (POTWs). Dental offices, which discharge mercury present in amalgam used for fillings, are a source of mercury discharges to POTWs. Mercury entering POTWs frequently partitions into the sludge and enters the environment through the incineration, landfilling, or land application of sludge or through surface water discharge. The new federal regulations require dental offices to use amalgam recovery devices and two best management practices: one which prohibits the discharge of waste ("or scrap") amalgam, and the other which prohibits the use of line cleaners that may lead to the dissolution of solid mercury when cleaning chair-side traps and vacuum lines. Additionally, the federal regulation requires dental offices to submit a One-Time Compliance Report to the Control Authority.

The federal regulations established that dental dischargers are not significant industrial users or categorical industrial users, unless designated as such by the Control Authority. This reduces most of the oversight and reporting requirements in 40 CFR Part 403, such as permitting and annual inspections that would be required if they were designated as significant industrial users or categorical industrial users. Lastly, the federal regulation reduced reporting for dental offices in comparison to reporting requirements for other industrial users that are subject to categorical pretreatment standards.

Existing dental offices that are subject to the rule must comply with the standards by July 14, 2020, and submit the One-Time Compliance Report by October 12, 2020. New dental offices that are subject to the rule must comply immediately with the standards and submit the One-Time Compliance Report within 90 days of discharge to a POTW. The One-Time Compliance Report must be submitted within 90 days after a transfer of ownership.

The adopted rulemaking amends §305.541 to adopt by reference 40 CFR Part 441 as published in the *Federal Register* on June 14, 2017, and minor corrections to the rule that were published in the *Federal Register* on June 26, 2017, and July 5, 2017, (82 FedReg 28777; 82 FedReg 30997).

Section Discussion

§305.541, Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits

The commission adopts amended §305.541 to add 40 CFR Part 441 and the *Federal Register* volume and date to the list of federal effluent guidelines and standards that were adopted by reference at the time Texas was awarded delegation of the National Pollutant Discharge Elimination System (NPDES) program and those that were adopted after delegation.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to adopt by reference new dental office pretreatment standards, which were adopted by the EPA in 40 CFR Part 441. The specific intent of the adopted rulemaking is to amend the commission's rules to incorporate recent federal regulatory changes that protect the environment and reduce risks to human health from environmental exposure, but that will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is procedural in nature; therefore, the adopted rule does not meet the definition of a "Major environmental rule."

Even if the adopted rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the requirements of 40 CFR Part 441 or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of

the agency, but rather specifically under the commission's rulemaking authority in Texas Water Code, §5.103. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to adopt by reference EPA's new dental office pretreatment standards found at 40 CFR Part 441. The adopted rule would substantially advance this stated purpose by amending §305.541 to reflect the EPA's new rules for dental office pretreatment standards into the commission's rules.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The commission is the regulatory agency that administers the state NPDES program and, therefore, is responsible for incorporating federal NPDES regulation changes into its permit program under 40 CFR §123.62(e) and the Memorandum of Agreement between EPA and the commission.

Nevertheless, the commission further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with federal regulations related to dental office pretreatment standards without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201- 33.210 and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rule includes ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies, and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on March 8, 2018. The comment period closed on March 12, 2018. The commission received one comment from the Texas Dental Association (TDA), which was in support of the rulemaking.

Response to Comment

Comment

TDA commented that they have been educating their members about eliminating amalgam discharge to POTWs since 2005. TDA also stated that they are developing pretreatment standard compliance resources for member dentists and answering any compliance questions members may have. Lastly, TDA looks forward to working with the TCEQ to help Texas dentists implement the new dental office pretreatment standards.

Response

The commission appreciates the comment and TDA's efforts to educate their members about the dental office pretreatment standards.

Statutory Authority

This amendments are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; and TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources.

The adopted amendments implement the new regulation in 40 Code of Federal Regulations Part 441.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2018.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)
SUBCHAPTER O. UNIFORM STATEWIDE ACCOUNTING SYSTEM

34 TAC §5.210

The Comptroller of Public Accounts adopts amendments to §5.210 concerning uniform statewide accounting system, without changes to the proposed text as published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3231). These amendments update the definitions and the internet address language listed in this section.

The amendments to subsection (b) update the format of the definitions listed in this subsection, without changing the substance of the definitions, so that they are presented in the same format as other definitions listed in Chapter 5; and change "USAS" to "USPS" in paragraph (7) to clarify that SPRS is a system used by state agencies that do not use USPS as their internal payroll and human resources system.

The amendments to subsection (c) delete the internet addresses listed in paragraphs (1) and (8) that are out-of-date and replace them with language that clarifies that the comptroller's user guides, manuals, and policy statements are accessible on the comptroller's website.

No comments were received regarding adoption of the amendment.

The section is adopted under Government Code, §2101.035(a), which allows the comptroller to adopt rules for the effective operation of the uniform statewide accounting system.

This section implements Government Code, §2101.035, regarding the administration of the uniform statewide accounting system.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2018.

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 27. TOLL PROJECTS
SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

43 TAC §§27.81 - 27.83

The Texas Department of Transportation (department) adopts amendments to §§27.81 - 27.83 concerning Operation of Department Toll Projects. The amendments to §§27.81 - 27.83 are adopted without changes to the proposed text as published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2260) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department has operated toll roads in the state of Texas since January of 2006. The department's past experiences have provided the agency with insight into best practices that may result in more efficient management and operation of its toll system. The amendments reflect the department's efforts to enhance operational efficiency and improve customer service. In addition, the amendments delete outdated references to operational elements that are no longer in use on department toll facilities.

Amendments to §27.81, Free Use of Turnpike Project by Military Vehicles, remove references to automatic coin machines, gates, and staffed toll lanes. These changes are necessary because the department no longer accepts cash at its toll facilities and, therefore, does not have staffed toll lanes or automatic coin machines.

Amendments to §27.82, Toll Operations, update the procedures used by the department and provide flexibility. Subsection (c) is amended to specify that the cost of postage will be considered when establishing customer account fees. The department has previously included this item in its cost calculations and this change merely clarifies that procedure. The amendments also provide that customer account fees may be waived or dismissed in accordance with toll collection and enforcement policies adopted by the department, and remove the current language related to the waiver of tag fees. These changes provide flexibility for agency management to develop operational policies that address customer service issues and the marketing of toll projects as needed. Finally, the amendments remove the reference to an account reactivation fee because this fee is no longer assessed by the department.

Amendments to §27.82(e) provide that administrative fees may be waived or dismissed in accordance with toll collection and enforcement policies adopted by the department. This change provides flexibility for agency management to develop operational policies that address customer service issues as needed.

Amendments to §27.83, Contracts to Operate Department Toll Projects, clarify the procedures used by the department and provide flexibility. Subsections (a) and (b) are amended to specify that the requirements for soliciting proposals set forth in the section apply only to contracts that provide an operational concession to a private entity. Except as provided by §27.84, the department will follow any of the department's applicable procurement processes when it is otherwise procuring personnel, equipment, systems, facilities, and services necessary to operate a toll project or system. The department purchases a variety of services and commodities in support of its tolling operations and a one-size-fits-all approach to procurement does not benefit the agency.

Amendments to §27.83(c) remove the requirement that a request for qualifications be published in the *Texas Register.* This change provides flexibility for the department to determine the best method for advertising a particular solicitation.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.052, which authorizes the department to enter into agreements for the provision of personnel, equipment, systems, facilities, and services necessary to operate a toll project or system; Transportation Code, §228.057, which authorizes the department to charge reasonable fees for administering electronic toll collection customer accounts; and Transportation Code §228.0547, which authorizes the department to assess an administrative fee under certain circumstances.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 228, Subchapter B.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2018.

TRD-201802852
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Effective date: July 18, 2018
Proposal publication date: April 13, 2018
For further information, please call: (512) 463-8630

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §§217.122, 217.123, 217.125 - 217.130

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Vehicle Titles and Registration, Subchapter F, §217.122, Definitions, §217.123, Access to Motor Vehicle Records. The department also adopts new §217.125, Additional Documentation Related to Certain Permitted Uses, §217.126, Limitations on Resale and Redisclosure, §217.127, Records Maintained by Recipients Who Resell or Redisclose Personal Information, §217.128, Department Review of Recipient's Records of Resale or Redisclosure, §217.129, Ineligibility to Receive Motor Vehicle Records, and §217.130, Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated. Section 217.129 is adopted without changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1621) and will not be republished. Sections 217.122, 217.123, 217.125, 217.126, 217.127, 217.128, and 217.130 are adopted with changes to the published proposed text and will be republished.

While the recordkeeping provisions of Transportation Code Chapter 730 have been in place since its enactment, the enforcement of these rules will not take place until December 31, 2018.

Changes in the adopted amendments respond to public comments or otherwise reflect nonsubstantive variations from the proposed amendments to improve clarity and consistency, including renaming the subchapter title. The changes do not affect new persons, entities, or subjects other than those given notice under the original proposal. Compliance with the adopted sections will be less burdensome than under the proposed sections.

EXPLANATION OF AMENDMENTS

Transportation Code, §730.014 allows any agency that compiles or maintains motor vehicle records to adopt rules to implement and administer the Motor Vehicle Records Disclosure Act.

The amendments to §217.122 differentiate those who request and receive personal information contained in motor vehicle records directly from the department with those who receive records by resale or redisclosure.

The amendments to §217.123 allow the department to accept identification not enumerated but deemed acceptable when processing a request for motor vehicle records.

EXPLANATION OF NEW SECTIONS

New §217.125 states what additional documentation is needed when submitting a request for motor vehicle records to the department. Where applicable, professionals licensed out-of-state may be allowed to obtain motor vehicle records on a record-by-record basis.

New §217.126 limits the forms personal information contained in motor vehicle records may be resold or redislosed and requires anyone reselling or redisclosing personal information to inform the recipient of their obligations under the Transportation Code.

New §217.127 states what records must be maintained by those who resell or redisclose personal information contained in motor vehicle records.

New §217.128 states the department's process in reviewing records kept by those who resell or redisclose personal information contained in motor vehicle records.

New §217.129 states when a requestor of motor vehicle records is ineligible to receive those records.

New §217.130 states how a requestor of motor vehicle records, whose access was previously revoked, may regain access to records.

COMMENTS AND RESPONSES

The department received comments from the following regarding the proposed rules: Steve Hayden, HDR; HS Hardy, QuickView Technologies (Quickview); Sean Wheatley, Experian Information Solutions, Inc. (Experian); Alice Miles, R.L. Polk & Co. (POLK); and Eric Ellman, Consumer Data Industry Association.

COMMENT

Polk and Experian requested the department clarify §217.122 to reduce the proposed definitions from three proposed to two -- one for those who request and receive motor vehicle records from the department, and one for every other person or entity who qualifies for motor vehicle records under Transportation Code, Chapter 730.

RESPONSE

The department agrees with the comments and has adjusted the definitions to differentiate between those who approach the department for motor vehicle records and those who may receive motor vehicle records under Transportation Code, Chapter 730.

COMMENT

QuickView commented adding "personal information" to the definition of motor vehicle record in §217.122 has the result of limiting non-personal information from disclosure.

RESPONSE

The department agrees with this comment and believes removing this provision better aligns with the statute, which differentiates how motor vehicles records with and without personal information may be resold or redisclosed.

COMMENT

Polk and Experian asked the department to clarify that the provisions of §217.123(a) and (b) do not apply to those seeking electronic access to records.

RESPONSE

Currently, customers under a service agreement in subsection (c) with the department for electronic access to motor vehicle records are vetted in accordance with that agreement. In entering into that service agreement with the department, customers complied with the provisions in §217.123(a) and (b). Following compliance with those two provisions, customers under a service agreement are only subject to §217.123(c) and that agreement.

No change is necessary.

COMMENT

HDR, Experian, and Polk asked the department to clarify how the additional documentation provisions of §217.125 apply to those who resell or redisclose department data.

RESPONSE

No change is necessary here, as §217.125 applies only to the department. This rule indicates the documentation the department will require in order to disclose personal information associated with a motor vehicle record. As mentioned, customers under a service agreement with the department are bound by the terms of that agreement and are not subject to the provisions in §217.125. The permitted uses of our service agreement customers are vetted according to that agreement and are continuously monitored by the recordkeeping provisions associated with Transportation Code Chapter 730.

COMMENT

QuickView asked the department to consider accepting out-of-state licenses for the additional documentation in §217.125, related to those who request personal information as insurance agents, tow truck operators, or private investigators.

RESPONSE

The department agrees with this comment and will accept out-of-state licenses as documentation required to prove a permitted use. The statute itself does not expressly limit disclosure to licensed professionals in Texas. However, under the department's authority to limit unlawful disclosure, these requests may only be submitted on a record-by-record basis.

COMMENT

Experian and Polk asked the department to modify §217.126 to reflect the recordkeeping provisions of §217.127 only apply to the resale and redisclosure of personal information.

RESPONSE

The department agrees that this modification is consistent with the Transportation Code and will require recordkeeping only on resold or redisclosed personal information.

COMMENT

Experian and Polk have asked the department to modify or delete recordkeeping provisions regarding the quantity of records disclosed due to the technical means by which the two consume and resell data.

RESPONSE

The department understands our customer's usage of data varies from person to person, and certainly reflected in those differences are varying technological abilities as well. This provision was not meant to grant the department control over our customers' data systems. Rather, this provision will be used to ensure that our customers are maintaining records and making them available to the department as required under 18 U.S.C. 2721 and Transportation Code Chapter 730. Lastly, when the department does ask our customers for records regarding resold or redisclosed personal information, this provision is satisfied by simply turning over those records to the department.

COMMENT

Experian and Polk asked the department to require language in resellers' contracts alerting their customers of the obligations of the Transportation Code. Additionally, the two asked the department to delete language holding resellers responsible for the misuse of data by downstream users.

RESPONSE

While the department greatly appreciates the inclusion of these provisions in the contracts of data resellers, we have always held those who receive our data responsible for the misuse of that particular data, regardless of misuse by the department's customers, or customers of our resellers. Our means of enforcement, however, is limited. Under the current statutory scheme and following a misuse of data, the department only has the authority to terminate access to the data and refer the misuse to law enforcement. The department does not have the authority to create a cause of action against any of our data customers.

On the other hand, since the enactment of DPPA, there has always been a federal cause of action for the person whose data was illegally disclosed.

No change is necessary.

COMMENT

Experian, Polk, and Quickview asked the department to change the mandatory termination provisions of §217.128 to discretionary provisions.

RESPONSE

The department agrees with this comment and will make termination of a service agreement discretionary. It has always been the department's goal to protect personal information while providing a service to our customers, that includes developing safeguards and remediation plans.

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §730.014, which provides that the department may adopt rules to implement and administer Transportation Code, Chapter 730, Motor Vehicle Records Disclosure Act.

CROSS REFERENCE TO STATUTE

Government Code, §552.130; Transportation Code, Chapter 730; and 18 U.S.C. §2721 et seq.

§217.122. Definitions.

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

(1) Authorized recipient--A person receiving motor vehicle records as defined by this subchapter, in a manner authorized by Transportation Code, Chapter 730.

(2) Department--Texas Department of Motor Vehicles.

(3) Motor vehicle records--Information regarding the titling or registration of motor vehicles, which may include the make, vehicle identification number, year, model, body style, license number of a motor vehicle, and the name, address, and social security number of an owner or lienholder.

(4) Personal information--Information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, personal identification certificate number, name, telephone number, medical or disability information, license plate number, or address other than the postal routing code.

(5) Requestor--A person seeking personal information contained in motor vehicle records directly from the department.

(6) Service agreement--A contractual agreement that allows individuals, businesses or governmental entities or institutions to access the department's motor vehicle records.

(7) Written request--A request made in writing, including electronic mail, electronic media, and facsimile transmission.

§217.123. Access to Motor Vehicle Records.

(a) Request for records. A requestor shall submit a written request on the form required by the department. Information will be released only in accordance with Title 18 U.S.C. §2721 et seq., Transportation Code, Chapter 730, Government Code, §552.130, and this subchapter. A completed and properly executed form must include, at a minimum:

(1) the name and address of the requestor;

(2) the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(3) a photocopy of the requestor's identification;

(4) a statement that the requested information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for a permitted use as indicated on the form;

(5) a certification that the statements made on the form are true and correct; and

(6) the signature of the requestor.

(b) Identification required. A requestor may not apply for receipt of personal information unless the requestor presents current photo identification containing a unique identification number. The identification document must be a:

(1) driver's license or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card;

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document;

(5) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H; or

(6) copy of current law enforcement credentials if the requestor is a law enforcement officer.

(c) Electronic access. The department may make motor vehicle records available under the terms of a written service agreement.

(1) Agreement with business or individuals. The written service agreement with a business or individual must contain:

(A) the specified purpose of the agreement;

(B) an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records);

(C) termination and default provisions;

(D) the contractor's signature;

(E) a statement that the use of motor vehicle records obtained by virtue of a service agreement is conditional upon its being used:

(i) in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730; and

(ii) only for the purposes defined in the agreement; and

(F) the statements required by subsection (a) of this section.

(2) Agreements with Texas governmental entities.

(A) The written service agreement with a Texas governmental entity must contain:

(i) the specified purpose of the agreement;

(ii) a statement that the use of motor vehicle records obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;

(iii) the statements required by subsection (a) of this section;

(iv) the signature of an authorized official; and

(v) an attached statement citing the entity's authority to obtain social security number information, if applicable.

(B) Texas governmental entities, as defined in Government Code, §2252.001, and including the Texas Law Enforcement Telecommunication System and toll project entities, as defined by

Transportation Code, §372.001, are exempt from the payment of fees, except as provided by §217.124(e) of this title.

(d) Ineligibility to receive personal information. The department may prohibit a person, business, or Texas governmental entity from receiving personal information if the department finds a violation of a term or condition of the agreement entered into in accordance with subsection (c) of this section.

(e) Initial deposits and minimum balances. Notwithstanding §217.124 of this title, the department may modify initial deposit and minimum balance requirements on a case by case basis depending on customer usage.

§217.125. Additional Documentation Related to Certain Permitted Uses.

(a) The department may require a requestor to provide reasonable assurance as to the identity of the requestor and that the use of motor vehicle records is only as authorized under Transportation Code, §730.012(a). Where applicable, each requestor submitting a request for motor vehicle records shall provide documentation satisfactory to the department that they are authorized to request the information on behalf of the business or government entity authorized to receive the information.

(b) Disclosure under the following permitted uses requires additional documentation submitted to the department:

(1) Transportation Code, §730.007(2)(C) requires submitting the information the business is attempting to verify against the department's motor vehicle records.

(2) Transportation Code, §730.007(2)(D) requires submitting proof of legal proceeding, or if no proceeding has been initiated, proof in anticipation of proceeding.

(3) Transportation Code, §730.007(2)(E) requires submitting documentation sufficient to prove the requestor is employed in a researching occupation.

(4) Transportation Code, §730.007(2)(F) requires submitting a license number provided by the Texas Department of Insurance, a license number the insurance support organization is working under, or proof of self-insurance.

(5) Transportation Code, §730.007(2)(G) requires submitting a license number provided by the Texas Department of Licensing and Regulation.

(6) Transportation Code, §730.007(2)(H) requires submitting a license number provided by the Texas Department of Public Safety.

(7) Transportation Code, §730.007(2)(I) requires submitting a copy of the commercial driver's license.

(8) Transportation Code, §730.007(2)(J) requires submitting documentation to relate the requested personal information with operation of a private toll transportation facility.

(9) Transportation Code, §730.007(2)(K) requires a consumer reporting agency, as defined by the Fair Credit Reporting Act (15 U.S.C. §1681 et. seq.), to submit documentation on official letterhead indicating a permitted use for personal information, as defined by that Act.

(c) Regarding §217.125(b)(4-6), the department may accept out-of-state licenses as documentation of a permitted use. Under this subsection, the department will limit access to a record-by-record basis.

§217.126. Limitations on Resale and Redisclosure.

(a) Authorized recipients may only resell or redisclose personal information to other authorized recipients and not in the identical or substantially identical format as provided by the department.

(b) Authorized recipients may not resell or redisclose the entire motor vehicle records database in its complete bulk format.

(c) Any authorized recipient reselling or redisclosing personal information must inform the person to whom they are reselling or redisclosing of their obligations under Transportation Code, Chapter 730 and this subchapter.

(d) Any authorized recipient is responsible for misuse of personal information by any person receiving their version of the information, regardless of whether the authorized recipient approved or was aware of subsequent transfers of the information.

§217.127. Records Maintained by Recipients Who Resell or Redisclose Personal Information.

(a) Authorized recipients who resell or redisclose personal information are required to maintain records of that transaction.

(b) Records must be maintained for not less than five years and must include:

(1) the name and contact information of any recipient of resold or redisclosed personal information contained in motor vehicle records;

(2) the permitted use for which the records were released, or documentation in accordance with 217.125(b);

(3) the quantity of records sold or disclosed to each subsequent person;

(4) a statement by the authorized recipient specifying what data was resold or redisclosed and in what format; and

(5) any other documentation of the agreement to resell or redisclose personal information contained in motor vehicle records.

§217.128. Department Review of Recipient's Records of Resale or Redisclosure.

(a) The department has the authority to request and review records kept by all authorized recipients who resell or redisclose personal information.

(b) This request will be made in writing.

(c) The requested records must be provided to the department within 30 days of the request.

(d) Failure to fully respond to the department's request may result in termination of access to motor vehicle records under Transportation Code, §730.007.

(e) Upon receipt of the requested records, the department will evaluate the records for compliance with the service agreement, applicable statutes, and rules.

(f) If it is determined that an authorized recipient is not in compliance with the service agreement, applicable statutes, and rules, the service agreement may be terminated.

§217.130. Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated.

(a) A requestor whose service agreement was previously terminated, but who is not subject to Transportation Code, §730.016, shall submit a written request for reapproval on the form required by the department.

(b) In addition to the requirements of §217.123 of this title (relating to Access to Motor Vehicle Records), the request must contain:

(1) any documents indicating remedial efforts the requestor has undertaken to prevent the unlawful disclosure of motor vehicle records,

(2) any documents indicating agreements between the requestor and third parties receiving resold or redisclosed motor vehicle records, and

(3) a statement that the requestor will notify the department before reselling or redisclosing any motor vehicle records for the time period prescribed by the department, including all of the information required under §217.127(b) of this title (relating to Records Maintained by Recipients Who Resell or Redisclose Personal Information). The notification must include the name, address, and contact information of the third party requesting resold or redisclosed motor vehicle records, and must include the form(s) used to verify the third party's lawful purpose in obtaining motor vehicle records.

(c) Failure to comply with any of the terms of this section or a re-offense of the service agreement will result in the termination of the service agreement and the permanent inability to receive motor vehicle records.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2018.

TRD-201802949
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 2, 2018
Proposal publication date: March 16, 2018
For further information, please call: (512) 465-5665

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CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 219, Oversize and Overweight Vehicles and Loads, Subchapter A, General Provisions, §219.2, Definitions; and Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §219.34, North Texas Intermodal Permit; and §219.36, Intermodal Shipping Container Port Permit, with changes to the proposed text as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1249). These rules will be republished. The department also adopts amendments to §219.35, Fluid Milk Transport Permit without changes to the proposed text, and this rule will not be republished.

EXPLANATION OF AMENDMENTS

The 85th Legislature, Regular Session, 2017, authorized three new permits for overweight vehicle combinations. Amendments to §§219.2, 219.34, 219.35, and 219.36 implement House Bill 2319, Senate Bill 1383, and Senate Bill 1524 by defining and clarifying terms that are used in these bills.

The department defines the terms "roll stability support safety system" and "truck blind spot systems" because industry and enforcement personnel could interpret these terms to mean different things. These terms were included in House Bill 2319, Senate Bill 1383, and Senate Bill 1524 to attempt to make these permitted vehicles safer. The department's definitions focus on safety. For example, the roll stability support safety system is defined to require an electronic system. The manual actions or perceptions of a human driver do not qualify as a "roll stability support safety system" because a human driver might not be capable of detecting or preventing instability problems as well as an electronic system.

An amendment to §219.34 and §219.36 clarifies the term "approximately 647 inches," and an amendment to §219.36 clarifies the term "approximately 612 inches." These terms state the authorized distance between the front axle of the truck-tractor and the last axle of the semitrailer in the combinations that are eligible for permits under §219.34 and §219.36.

The department received calls from industry representatives who wanted to know how the department interpreted these terms because industry wanted to exceed these numbers. For example, a manufacturer told one motor carrier that they have equipment in production that exceeded the 612-inch requirement by 46 inches.

The Legislature did not define these terms in House Bill 2319 or Senate Bill 1524. In construing a statute, the Code Construction Act says a court may consider the object sought to be attained, the consequences of a particular construction, the administrative construction of the statute, etc. *See* Government Code, §311.023.

The Legislature used the terms "approximately 647 inches" and "approximately 612 inches" to ensure a certain distance between the applicable axles to minimize or prevent damage to roadways that could be caused by the excess weight of the permitted vehicles. The department discussed this issue with the Texas Department of Transportation (TxDOT) because they design and maintain roadways on which the permitted vehicles could travel. The department also discussed this issue with the Texas Department of Public Safety (DPS) because they enforce laws and rules regarding weight. Further, the department discussed this issue at TxDOT's Oversize and Overweight Stakeholder Workshop on November 20, 2017, when an industry representative asked for clarification on the meaning of the terms "approximately 612 inches" and "approximately 647 inches."

In defining these terms, the department focused on the object sought to be attained, which is to minimize or prevent damage that could be caused by the excess weight of the permitted vehicles. The department also focused on the consequences of a particular interpretation or construction of the terms. TxDOT stated that distances below 612 inches or 647 inches could have a significant impact on their assessment of bridges and may result in additional load postings. Also, industry only asked if the distance could go above 612 and 647 inches, so they could purchase equipment that is currently in production.

The department, TxDOT, and DPS agree that 612 inches and 647 inches are the minimum distances allowed; however, the permitted vehicles can exceed these distances. TxDOT did not suggest a specific maximum distance; however, they stated the longer the distance, the better. DPS pointed out the potential benefit of not listing a maximum distance in case a manufacturer or engineer designs equipment that exceeds whatever maximum distance the department might establish in §219.34 and §219.36. The amendments establish the maximum distance, so the department's personnel and industry have a clear maximum distance.

Other amendments to §219.2 delete an incorrect statutory reference and update the language to be internally consistent.

COMMENTS

The department received comments from Kwik Equipment Sales, LLC (Kwik) and the Texas Trucking Association (TXTA).

Kwik requested the department to increase the proposed 10 percent tolerance to a 15 percent tolerance on the 100,000-pound Intermodal Shipping Container Port Permit under §219.36(n), which includes the term "approximately 612 inches." Kwik stated that if the tolerance remained at 10 percent, this permit would be useless, and would probably never be used by anyone in the industry.

TXTA requested the department to increase the proposed 10 percent tolerance to a 15 percent tolerance on the following permits: 1) the 93,000-pound North Texas Intermodal Permit under §219.34(k); 2) the 93,000-pound Intermodal Shipping Container Port Permit under §219.36(m); and 3) the 100,000-pound Intermodal Shipping Container Port Permit under §219.36(n). Based on the data TXTA has seen, they feel that the 15 percent tolerance would allow the permittees to better utilize the overweight permits, while still being compliant with the maximum axle weight limitations contained in statute. TXTA agrees that the following distances specified in House Bill 2319 and Senate Bill 1524 are minimum distances: "approximately 612 inches" and "approximately 647 inches."

TXTA also requested the department to modify the proposed definition for "truck blind spot systems" because the proposed definition could be interpreted to require the systems to detect objects in all positions located to the rear of the driver's seat in the truck-tractor. Although truck blind spot systems detect objects in the lanes that are adjacent to the lane in which the truck-tractor and semitrailer are operating, the systems don't detect objects in all positions located to the rear of the driver's seat in the truck-tractor.

RESPONSE

The department adopts §219.34 and §219.36 with amendments to increase the 10 percent tolerance to a 15 percent tolerance on the following permits: 1) the 93,000-pound North Texas Intermodal Permit under §219.34(k); 2) the 93,000-pound Intermodal Shipping Container Port Permit under §219.36(m); and 3) the 100,000-pound Intermodal Shipping Container Port Permit under §219.36(n). These amendments allow the permittees to better utilize the overweight permits while still being compliant with the maximum axle weight limitations contained in statute. Also, these amendments do not change the length limitation on the semitrailer under Transportation Code, §621.204(a).

The department adopts §219.2 with amendments to modify the definition for "truck blind spot systems" to make it clear that these systems don't detect objects in all positions located to the rear of the driver's seat. The department worked with DPS to modify the definition.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §219.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code §623.407(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Vehicles Transporting Fluid Milk; and Transportation Code, §623.411(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Intermodal Shipping Containers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2018.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: July 15, 2018
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For further information, please call: (512) 465-5665

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SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §§219.34 - 219.36

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code §623.407(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Vehicles Transporting Fluid Milk; and Transportation Code, §623.411(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Intermodal Shipping Containers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623.

§219.35. Fluid Milk Transport Permit.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting fluid milk under the provisions of Transportation Code, Chapter 623, Subchapter U, as added by Chapter 750 (S.B. 1383), Acts of the 85th Legislature, Regular Session, 2017.

(b) Application for permit.

(1) To qualify for a fluid milk transport permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number or email address;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) a list of counties in which the vehicle will be operated.

(3) The application shall be accompanied by the total annual permit fee of $1,200.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(e) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(f) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

(g) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(1) visibility of less than 2/10 of one mile; or

(2) weather conditions such as wind, rain, ice, sleet, or snow.

(h) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(i) Construction or maintenance areas.

(1) The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(j) Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(k) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

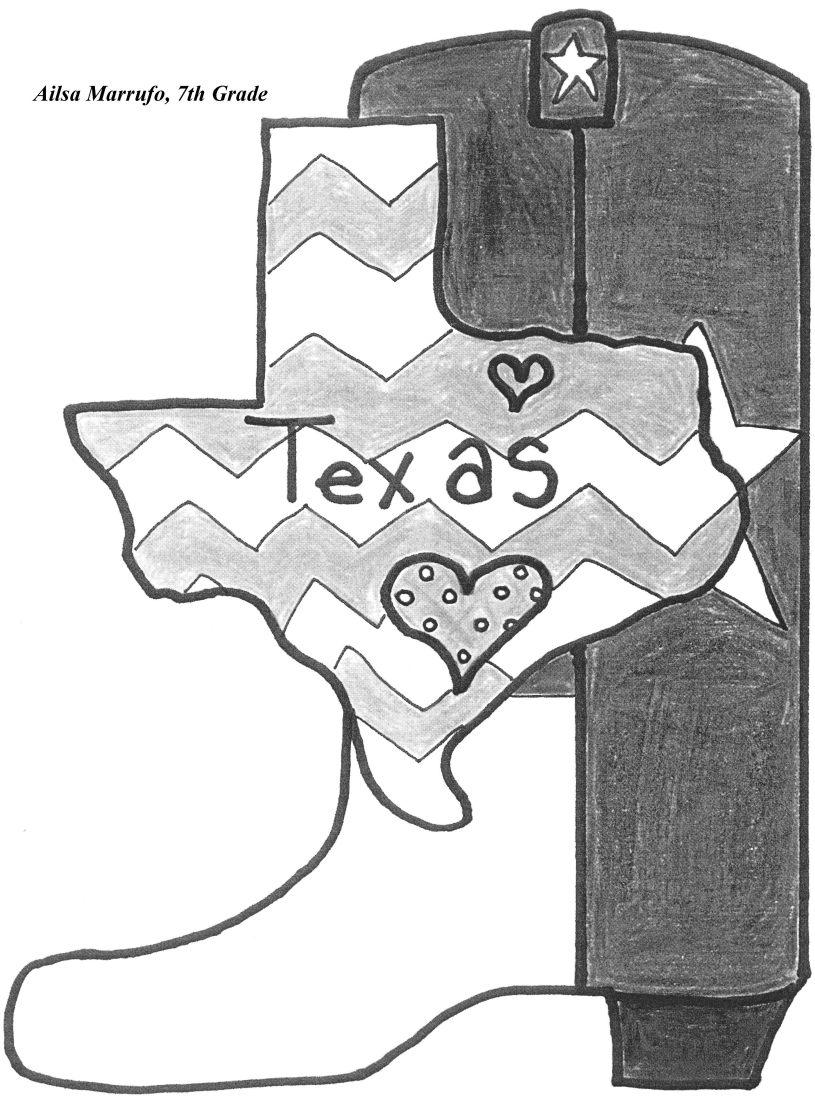
(l) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2018.

TRD-201802826
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: July 15, 2018
Proposal publication date: March 2, 2018
For further information, please call: (512) 465-5665

Ailsa Marrufo, 7th Grade



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §163.3, concerning Community Justice Assistance Division Objectives. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.3.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201802907
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: July 2, 2018

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review §163.38, concerning Sex Offender Supervision. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.38.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201802909
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: July 2, 2018

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs ("the Department") files this notice of Intention to Review 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22, Providing Contact Information to the Department. The review is being conducted in accordance with Tex. Gov't Code, §2001.039, which requires state agencies to review and consider for repeal, readoption, or readoption with amendments their administrative rules every four years. The review shall assess whether the reasons for initially adopting the rules continue to exist.

The Department will accept public comments for thirty (30) days following the publication of this notice concerning whether the reasons for initially adopting the rule continue to exist.

All comments or questions in response to this notice of rule review may be submitted in writing from July 16, 2018, through August 16, 2018. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0070, or email info@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, August 16, 2018. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* in accordance with the Administrative Procedure Act, Tex. Gov't Code, Chapter 2001.

TRD-201802931
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 2, 2018

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter A, Board of Trustees Relationship, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 61, Subchapter A, in the May 11, 2018, issue of the *Texas Register* (43 TexReg 3125).

Relating to the review of 19 TAC Chapter 61, Subchapter A, the SBOE finds that the reasons for adopting Subchapter A continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter A. At a later date, the SBOE may consider an amendment to §61.2 that would reduce the number of nominees required for submission when the commanding officer recommends ei-

ther the appointment of new or reappointment of existing board members for vacancies that occur.

TRD-201802945
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: July 2, 2018

♦ ♦ ♦

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter A, Gifted/Talented Education; Subchapter C, Texas Certificate of High School Equivalency; and Subchapter D, Special Education Services and Settings, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 89, Subchapters A, C, and D, in the March 9, 2018, issue of the *Texas Register* (43 TexReg 1473).

Relating to the review of 19 TAC Chapter 89, Subchapter A, the SBOE finds that the reasons for adopting Subchapter A continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter A. At a later date, the SBOE may consider revisions to the *Texas State Plan for the Education of Gifted/Talented Students* and, if necessary, amendments to Chapter 89, Subchapter A.

Relating to the review of 19 TAC Chapter 89, Subchapter C, the SBOE finds that the reasons for adopting Subchapter C continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter C. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 89, Subchapter D, the SBOE finds that the reasons for adopting Subchapter D continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter D. At a later date, the SBOE may consider an amendment to §89.61, Contracting for Residential Educational Placements for Students with Disabilities, to provide clarity to local educational agencies (LEAs) for situations in which students transfer from one LEA to another after the student's admission, review, and dismissal committee has agreed to placement in a residential facility and a contract with the facility has been executed.

TRD-201802946
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: July 2, 2018

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §1.16(f)(4)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

ANNUAL DISCLOSURE STATEMENT FOR FINANCIAL ADVISORS AND SERVICE PROVIDERS
DUE NO LATER THAN APRIL 15

INSTRUCTIONS:

1) THE REPORTING PERIOD COVERED BY THIS STATEMENT CONSISTS OF THE PRECEDING CALENDAR YEAR.
2) A NEW OR AMENDED STATEMENT MUST BE PROMPTLY FILED WITH THE PARTIES LISTED IN STEP 4 WHENEVER THERE IS NEW INFORMATION TO REPORT UNDER TEXAS GOVERNMENT CODE, SECTION 2263.005(a).
3) THIS STATEMENT MUST BE SUBMITTED EVEN IF YOU ANSWER "NO" TO QUESTIONS 1 AND 2 IN PART 2.
4) SUBMIT A COPY OF THIS STATEMENT TO THE FOLLOWING (FOR EACH GOVERNMENTAL ENTITY TO WHICH YOU PROVIDE SERVICES):
   a. ADMINISTRATIVE HEAD OF THE STATE GOVERNMENTAL ENTITY
   b. THE STATE AUDITOR (mail to P.O. Box 12067, Austin, TX, 78711-2067)
5) PROMPT FILING REQUIRES A POSTMARK DATE NO LATER THAN APRIL 15 IF THE COMPLETED FORM IS RECEIVED AT THE CORRECT ADDRESS.

PART 1: GENERAL INFORMATION

FILING TYPE (Check one) ☐ ANNUAL DISCLOSURE FOR YEAR ENDING DECEMBER 31, 20___ ☐ UPDATED DISCLOSURE

NAME OF INDIVIDUAL _____ JOB TITLE_____

NAME OF BUSINESS ENTITY_____ TYPE OF SERVICE PROVIDED_____

ADDRESS_____

CITY_____ STATE_____ ZIP_____ PHONE_____

NAME OF STATE GOVERNMENTAL ENTITY AND/OR GOVERNING BOARD MEMBER TO WHICH YOU ARE PROVIDING SERVICES_____

PART 2: DISCLOSURES

DEFINITION: (Texas Government Code, Section 2263.002)
Financial advisor or service provider includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISOR OR SERVICE PROVIDER (Texas Government Code, Section 2263.005)
Financial advisors and service providers (see definition) must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a transaction with the state governmental entity, without regard to whether the relationships are direct, indirect, personal, private, commercial, or business relationships.

1) Do you or does your business entity have any relationship with any party to a transaction with the state governmental entity (other than a relationship necessary to the investment or funds management services that you or your business entity performs for the state governmental entity) for which a reasonable person could expect the relationship to diminish your or your business entity's independence of judgment in the performance of your responsibilities to the state entity?
   Yes_____ No_____
   If yes, please explain in detail. (Attach additional sheets as needed.)
   _____
   _____

2) Do you or does your business entity have any direct or indirect pecuniary interests in any party to a transaction with the state governmental entity if the transaction is connected with any financial advice or service that you or your business entity provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds?
   Yes_____ No_____
   If yes, please explain in detail. (Attach additional sheets as needed.)
   _____
   _____

PART 3: SIGNATURE AND DATE

I hereby attest that all information provided above is complete and accurate. I acknowledge my or my firm's responsibility to submit promptly a new or amended disclosure statement to the parties listed in step 4 of the instructions if any of the above information changes.

Signature_____ Date_____

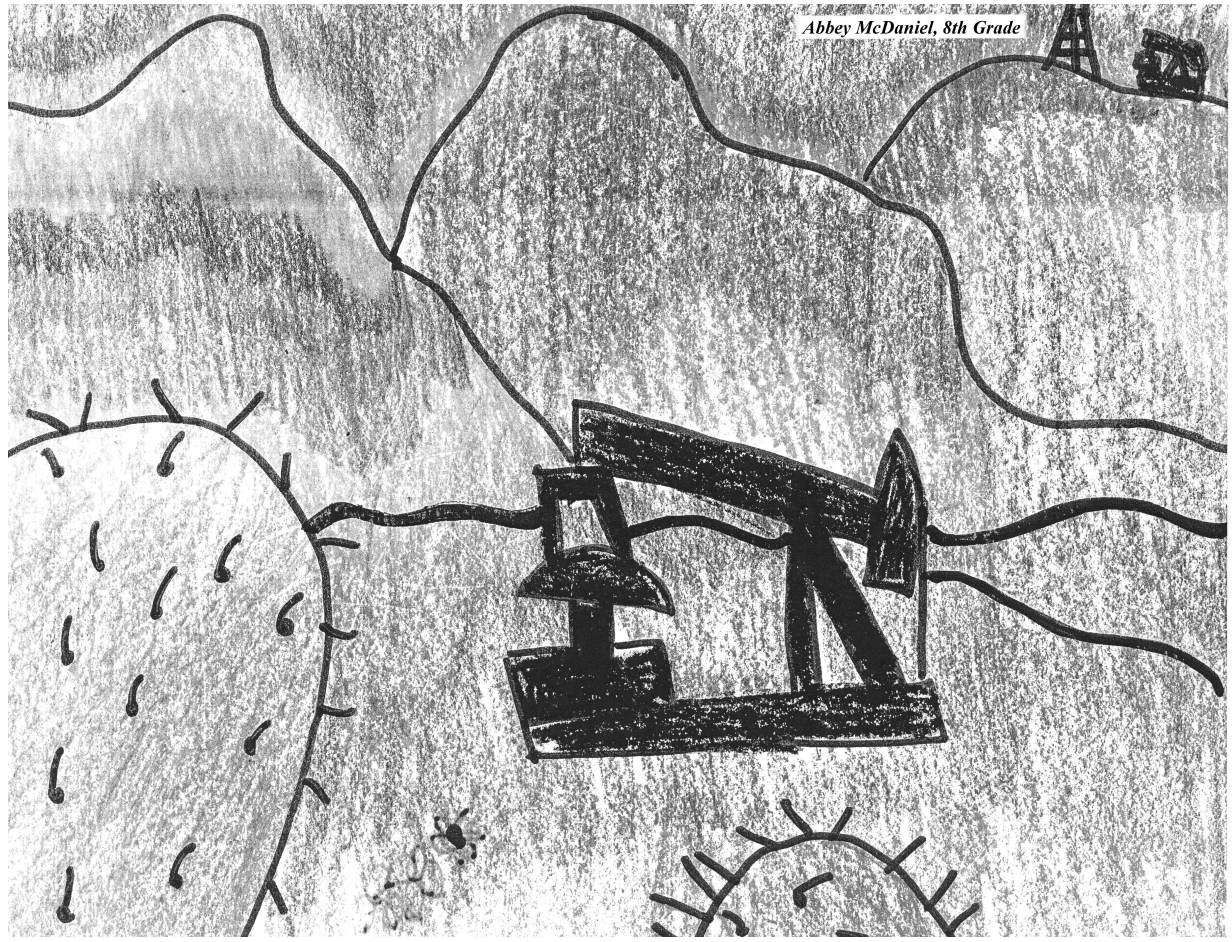
Figure: 16 TAC §25.247(e)

Date of Commission Order in Non-Investor-Owned Transmission Service Provider's Last Rate Change under §25.192	**Filing Deadline for Interim Update under §25.192(h)**
Prior to January 1, 1999	One year after effective date of this rule
January 1, 1999 to January 1, 2006	Two years after effective date of this rule
January 2, 2006 to March 30, 2011	Three years after effective date of this rule
April 1, 2011 to January 1, 2013	Four years after effective date of this rule
January 2, 2013 to 36 months before effective date of this rule	Five years after effective date of this rule

Figure: 22 TAC §190.14(6)

Prescribing, writes false or fictitious prescriptions OR prescribes or dispenses drugs to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs OR writes prescriptions for or dispenses to a person who the physician should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs	§164.053(a)(3)-(a)(4) (defines the violations under unprofessional conduct)	Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk management; chart monitor at least 8 cycles; if Respondent does not use one, order to develop a pain management contract with specific provisions for termination of physician-patient relationship on a maximum of 3 violations by the patient including a positive test for a controlled substance not prescribed by Respondent, drug screens required by contract; JP Exam; admin penalty of $3,000 per violation	Agreed Order Low sanctions plus: restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and increase administrative penalty to $5,000 per violation. If evidence of false or fictitious prescriptions, surrender DEA registration certificate for all controlled substance schedules.
Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, one patient, no prior board disciplinary history related to standard of care or care-related violations OR prescribing, administering, or dispensing in a manner inconsistent	§164.053(a)(5), (a)(6) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed) OR prescribing, administering, or dispensing in a manner inconsistent with public health and welfare	Remedial Plan CME in appropriate area; $500 administration fee per year.	Agreed Order: Proficiency testing, CME in appropriate area; chart monitor for 8 cycles; administrative penalty of $3,000 per violation

with public health and welfare, one patient, no prior board disciplinary history related to standard of care or care-related violations			
Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, more than one patient or prior history of disciplinary action for standard of care or care-related violations OR prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, more than one patient or prior history of disciplinary action for standard of care or care-related violations	§164.053(a)(5),(a)(6) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)	Agreed Order: Proficiency testing; CME in appropriate area; chart monitor 12 cycles; administrative penalty $3,000 per violation	Agreed Order: Low sanctions plus restrictions on practice, including prescribing and administering controlled substances and dangerous drugs; and administrative penalty of $5,000 per violation. If there are aggravating factors, revocation should be considered.


Abbey McDaniel, 8th Grade

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/09/18 - 07/15/18 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/09/18 - 07/15/18 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 07/01/18 - 07/31/18 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 07/01/18 - 07/31/18 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-201802963
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 3, 2018

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 13, 2018. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 13, 2018. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aransas County Navigation District 1; DOCKET NUMBER: 2018-0705-WQ-E; IDENTIFIER: RN105672513; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: harbor; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: City of Fairfield; DOCKET NUMBER: 2017-1121-MLM-E; IDENTIFIER: RN101607778; LOCATION: Freestone County; TYPE OF FACILITY: wastewater treatment facility with an associated lift station; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and §317.3(e)(2), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010168002, Permit Conditions Number 2.g and Operational Requirements Number 4, by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR05CA36, Part III, Sections B(2) and (5)(a), by failing to conduct routine facility inspections on a quarterly basis, and failing to conduct the annual comprehensive site inspection to determine the effectiveness of the Pollution Prevention Measures and Controls; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010168002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (9)(a) and TPDES Permit Number WQ0010168002, Monitoring and Reporting Requirements Number 7(c), by failing to provide notification of any effluent violation which deviates from the permitted effluent limitation by more than 40%; PENALTY: $25,000; Supplemental Environmental Project offset amount of $20,000; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of La Grange; DOCKET NUMBER: 2016-1851-PWS-E; IDENTIFIER: RN101389666; LOCATION: La Grange, Fayette County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $360; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-3063; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: City of Sachse; DOCKET NUMBER: 2018-0178-WQ-E; IDENTIFIER: RN101197747; LOCATION: Sachse, Dallas

County; TYPE OF FACILITY: wastewater collection system with an associated lift station; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater from the collection system into or adjacent to water in the state; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Texarkana; DOCKET NUMBER: 2018-0392-PWS-E; IDENTIFIER: RN101200665; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(d)(10)(B), by failing to design the inlet and outlet of clarification facilities so as to prevent short-circuiting of flow or the destruction of floc; 30 TAC §290.42(d)(2)(C), by failing to provide make-up water supply lines to chemical feeder solution mixing chambers with an air gap or other acceptable backflow prevention device; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.46(z), by failing to develop an adequate nitrification action plan for a system distributing chloraminated water; 30 TAC §290.46(s)(1), by failing to calibrate the facility's flow meters at least once every year; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; and 30 TAC §290.46(f)(2), by failing to provide operating records and make them available for review to the executive director during the investigation; PENALTY: $2,950; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: CSCW GROUP LLC dba Cityview Car Wash and Oil Change; DOCKET NUMBER: 2018-0444-PST-E; IDENTIFIER: RN101556272; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: car wash with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: David Peters; DOCKET NUMBER: 2017-1773-MSW-E; IDENTIFIER: RN109891028; LOCATION: Andrews County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: Duchman, Ltd. dba Duchman Family Winery; DOCKET NUMBER: 2017-1312-PWS-E; IDENTIFIER: RN106301245; LOCATION: Driftwood, Hays County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.42(c)(1), 290.110(e)(2) and (6), 290.111(a)(2) and (h), and 290.122(b)(2)(B) and (f), by failing to provide a minimum treatment consisting of coagulation with direct filtration for groundwater under the influence of surface water (GUI), and failing to issue public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to provide a minimum treatment consisting of coagulation with direct filtration for GUI, and failing to submit Surface Water Monthly Operating Reports for systems that use GUI; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct repeat coliform monitoring during the month of June 2015, regarding the failure to conduct increased coliform monitoring during the month of August 2014, and regarding the failure to conduct triggered source monitoring during the month of July 2014; PENALTY: $1,961; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: EPR Parks, LLC; DOCKET NUMBER: 2018-0438-MWD-E; IDENTIFIER: RN102095627; LOCATION: Spring, Harris County; TYPE OF FACILITY: waterpark with a wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011886001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $813; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Frontier Fuel, L.P. dba Frontier Fuel Warehouse; DOCKET NUMBER: 2018-0229-PST-E; IDENTIFIER: RN102023892; LOCATION: Dalhart, Dallam County; TYPE OF FACILITY: warehouse with wholesale sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,438; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: GLENN A. SMITH CORPORATION; DOCKET NUMBER: 2017-1464-WQ-E; IDENTIFIER: RN109709964; LOCATION: Tyler, Smith County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 2616 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: GVA Assets, LLC; DOCKET NUMBER: 2018-0723-WQ-E; IDENTIFIER: RN110314887; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: Hikaru Sakura Incorporated dba Timeout C-Store and Eagle C-Stores dba Timeout C-Store; DOCKET NUMBER: 2018-0433-PST-E; IDENTIFIER: RN101777498; LOCATION: Rhome, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Irbed Corp dba Adams Food Mart; DOCKET NUMBER: 2018-0198-PST-E; IDENTIFIER: RN101563575; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor

the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days in between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Tyler Gerhardt, (512) 239-2506; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: JAY OMKARA INCORPORATED; DOCKET NUMBER: 2016-1761-PWS-E; IDENTIFIER: RN102321874; LOCATION: Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(4) and §290.106(e), by failing to provide the results of quarterly nitrate sampling for the fourth quarter of 2015 through the second quarter of 2016, and failing to provide the results of quarterly nitrite sampling for the fourth quarter of 2015 to the executive director; PENALTY: $214; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(16) COMPANY: JBS PACKING COMPANY, INCORPORATED; DOCKET NUMBER: 2018-0493-MSW-E; IDENTIFIER: RN105367171; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: shrimp processing plant; RULES VIOLATED: 30 TAC §330.15(a)(1) and (c) and TWC, §26.121(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste into or adjacent to water in the state; PENALTY: $1,187; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: Joynal Abdin dba Alvin Food Stop; DOCKET NUMBER: 2017-1616-PST-E; IDENTIFIER: RN101739449; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Kashmira Investments, Incorporated dba Copperas Cove Food Mart; DOCKET NUMBER: 2018-0090-PST-E; IDENTIFIER: RN101667293; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and 30 TAC §334.602(a), by failing to designate, train and certify at least one individual for each class of operator - Class A, Class B, and Class C for the facility; PENALTY: $40,683; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: LYFORD GIN ASSOCIATION; DOCKET NUMBER: 2018-0445-PST-E; IDENTIFIER: RN102782315; LOCATION: Lyford, Willacy County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: New Sov D, LLC; DOCKET NUMBER: 2018-0151-MSW-E; IDENTIFIER: RN109684233; LOCATION: Trinity County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c) and TWC, §26.121(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(21) COMPANY: NNS Group Incorporated dba Shady Grove Food Mart; DOCKET NUMBER: 2018-0173-PST-E; IDENTIFIER: RN102285327; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $5,615; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: OAKWOOD CUSTOM HOMES GROUP LTD; DOCKET NUMBER: 2018-0708-WQ-E; IDENTIFIER: RN109834697; LOCATION: College Station, Brazos County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: OLDEN WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0142-PWS-E; IDENTIFIER: RN101459303; LOCATION: Olden, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to submit the Disinfectant Level Quarterly Operating Report for the third quarter of 2016; and 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter for haloacetic acids (HAA5), based on the locational running annual average, and failing to timely provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the MCL for HAA5 during the third quarter of 2017; PENALTY: $267; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155;

REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(24) COMPANY: OVERLAND CONTRACTING INCORPORATED; DOCKET NUMBER: 2018-0704-WQ-E; IDENTIFIER: RN109464768; LOCATION: Irion County; TYPE OF FACILITY: substation; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(25) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2017-0313-AIR-E; IDENTIFIER: RN100217363; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Federal Operating Permit (FOP) Number O1368, Special Terms and Conditions (STC) Number 14, New Source Review (NSR) Permit Numbers 7647B and PSDTX276M2, Special Conditions (SC) Number 1, and Texas Health and Safety Code (THSC), §385.082(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §§101.20(3), 117.320(e)(1), 117.340(c)(3), and 122.143(4), FOP Number O1368, STC Number 14, NSR Permit Numbers 7647B and PSDTX276M2, SC 21.A, and THSC, §382.085(b), by failing to provide substitute emissions compliance data when the nitrogen oxides monitor is offline and the electric generating facility is operating; PENALTY: $8,288; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Ricky W. Widner; DOCKET NUMBER: 2018-0702-OSI-E; IDENTIFIER: RN103423513; LOCATION: Graham, Jack County; TYPE OF FACILITY: on-site sewage facility; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(27) COMPANY: SAB ENTERPRISE INCORPORATED dba Nolan Express; DOCKET NUMBER: 2018-0241-PST-E; IDENTIFIER: RN101432649; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $10,594; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Sky World Ventures, LLC dba Convenience Food Mart; DOCKET NUMBER: 2018-0342-PST-E; IDENTIFIER: RN102719424; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,687; ENFORCEMENT COORDINATOR: Christopher Moreno, (512) 239-2618; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Spirit 4U LLC dba Jacobs Spirit; DOCKET NUMBER: 2018-0449-PST-E; IDENTIFIER: RN101432714; LOCATION: Plano, Collin County; TYPE OF FACILITY: liquor store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $2,663; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: SULZER CHEMTECH USA, INCORPORATED; DOCKET NUMBER: 2018-0049-PWS-E; IDENTIFIER: RN101183432; LOCATION: Humble, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.41(c)(3)(O), by failing to provide all well units with an intruder-resistant fence, the gates of which are provided with locks or shall be enclosed in locked, ventilated well house; and 30 TAC §290.42(e)(5), by failing to house the hypochlorination solution containers and pumps in a secure enclosure to protect them from adverse weather conditions and vandalism; PENALTY: $213; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201802947
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2018

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Correction of Error

In the December 8, 2017, issue of the *Texas Register* (42 TexReg 6964), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 6, for City of La Grulla (42 TexReg 6945). The error is as submitted by the commission.

The reference to penalty should be corrected to: "$3,955."

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201802948
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2018

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Notice of Opportunity to Comment on a Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into com-

pliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2018.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 13, 2018.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: D.N.J.S., Inc.; DOCKET NUMBER: 2017-1306-PST-E; TCEQ ID NUMBER: RN101900108; LOCATION: 13183 Interstate Highway 10 East, Schertz, Bexar County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.10(b)(2), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: $7,736; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201802939
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2018

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC) §7.075. TWC §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2018.** TWC §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 13, 2018.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: 2901 S Walton Walker, LLC dba Quickmart; DOCKET NUMBER: 2016-1995-PST-E; TCEQ ID NUMBER: RN108923426; LOCATION: 3006 Duncanville Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; and 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; PENALTY: $13,354; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: DHJB Development, LLC; DOCKET NUMBER: 2015-0188-MLM-E; TCEQ ID NUMBERS: RN105332522 and RN104912704; LOCATION: northeast corner of United States Highway 281 and Farm to Market Road 1863, Bulverde, Comal County; TYPE OF FACILITY: residential development project that contains a wastewater treatment facility; RULES VIOLATED: 30 TAC §213.4(j)(4) and sewage collection system (SCS) Plan Number 2702.03 Standard Condition Number 5, by failing to obtain approval of a modification to an approved SCS plan prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.4(k) and Water Pollution Abatement Plan (WPAP) Number 2702.04 Standard Conditions Numbers 8 and 14, by failing to implement and maintain the approved temporary best management practices and measures to prevent pollutants from escaping the site; 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Contributing Zone Plan prior to commencing regulated activity over the Edwards Aquifer Contributing Zone; 30 TAC §281.25(a)(4) and

Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150013937, Part III, Section F.6(a), by failing to maintain all protective measures identified in the Storm Water Pollution Prevention Plan (SWP3), in effective operating condition; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR150013937, Part III, Section G.2, by failing to stabilize soil where construction had ceased; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR150013937, Part III, Section F.2(b), by failing to include an implementation schedule of temporary and permanent erosion control and stabilization practices in the SWP3; 30 TAC §281.25(a)(4), by failing to maintain all protective measures identified in the SWP3 in effective operating condition; 30 TAC §213.4(k) and §213.5(f)(2)(B) and WPAP Number 2702.04 Standard Condition Number 12, by failing to immediately suspend all regulated activities near a sensitive feature discovered during construction until receiving executive director approval for the methods proposed to protect a sensitive feature; TWC §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; and 30 TAC §319.11(c), by failing to properly analyze effluent samples; PENALTY: $43,598; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Go Frac, LLC; DOCKET NUMBER: 2017-0066-IHW-E; TCEQ ID NUMBER: RN106493190; LOCATION: located at 350 Dennis Road, Weatherford, Parker County; TYPE OF FACILITY: storage yard and maintenance facility; RULES VIOLATED: 30 TAC §§335.62, 335.503 and 335.504, and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and classifications; 30 TAC §335.2, by causing, suffering, allowing, or permitting the collection, handling, storage, processing, and/or disposal of industrial and hazardous waste; and 30 TAC §335.9(a)(1), by failing to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal; PENALTY: $28,875; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: M L S S INC. dba Sunny Food Mart; DOCKET NUMBER: 2016-0950-PST-E; TCEQ ID NUMBER: RN101330751; LOCATION: 1667 State Highway 71 West, Cedar Creek, Bastrop County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; STAFF ATTORNEY: Joey Washburn, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: MMF Global Business Corp dba Exxon Food Mart; DOCKET NUMBER: 2018-0091-PST-E; TCEQ ID NUMBER: RN104264049; LOCATION: 12809 Bellaire Boulevard, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST system; TWC §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC §26.3475(c)(2) and 30 TAC §334.51(b)(2)(C), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; and Texas Health and Safety Code §382.085(b) and 30 TAC §115.225, by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: $11,988; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Riviera Water System, Inc.; DOCKET NUMBER: 2017-0623-PWS-E; TCEQ ID NUMBER: RN101251999; LOCATION: intersection of West Pecan and North 7th Street, Riviera, Kleberg County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low-pressure event or water outage using the prescribed format in 30 TAC §290.47(e); and Texas Health and Safety Code §341.0315(c) and 30 TAC §290.45(b)(1)(D)(v), by failing to provide emergency power that will deliver water at a rate of 0.35 gallons per minute per connection to the distribution system in the event of the loss of normal power supply; PENALTY: $850; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201802940
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2018

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 13, 2018.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory au-

thority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 13, 2018.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Abraxas Corporation; DOCKET NUMBER: 2017-0233-MWD-E; TCEQ ID NUMBER: RN101521391; LOCATION: 3301 Cattlebaron Road, approximately 0.9 mile north of the intersection of Cattlebaron and White Settlement Roads, Parker County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), §312.48, and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015010001, Sludge Provisions, by failing to submit the annual sludge report; 30 TAC §305.125(1) and (17), §319.7(d), and TPDES Permit Number WQ0015010001, Monitoring and Reporting Requirements Number 1, by failing to submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0015010001, Effluent Limitations and Monitoring Requirements Number 2 and Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §217.6(d), §305.125(1), and TPDES Permit Number WQ0015010001, Other Requirements Number 7, by failing to submit a summary transmittal letter within 60 days of permit issuance; 30 TAC §305.125(1) and TPDES Permit Number WQ0015010001, Other Requirements Number 9, by failing to submit a structural assessment of the facility performed by a licensed Texas Professional Engineer within six months of permit issuance; and 30 TAC §305.125(1) and TPDES Permit Number WQ0015010001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $42,625; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: ESPINOZA STONE, INC.; DOCKET NUMBER: 2017-1301-EAQ-E; TCEQ ID NUMBER: RN104097969; LOCATION: 3270 County Road 239, Georgetown, Williamson County; TYPE OF FACILITY: limestone quarry; RULES VIOLATED: 30 TAC §213.4(a)(1) and (j)(3) and Edwards Aquifer Protection Plan, Water Pollution Abatement Plan (WPAP) Number 11-14032601, Standard Conditions Number 6, by failing to obtain approval of a modification to an approved WPAP prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $13,500; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: Jesus Farias dba Farias Tire Shop; DOCKET NUMBER: 2017-1778-MSW-E; TCEQ ID NUMBER: RN109573014; LOCATION: 212 North Front Street, Mathis, San Patricio County; TYPE OF FACILITY: tire service and repair shop; RULES VIOLATED: 30 TAC §324.15 and 40 Code of Federal Regulations §279.22(d), by failing to perform response actions upon detection of a release of used oil; and 30 TAC §328.23(a) and (b), by failing to prevent the disposal of used oil filters in a manner that results in the discharge of oil into soil; PENALTY: $1,050; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: R&K FABRICATING INC.; DOCKET NUMBER: 2017-0936-IHW-E; TCEQ ID NUMBER: RN104085956; LOCATION: 3183 Highway 146, Dayton, Liberty County; TYPE OF FACILITY: frac tank manufacturing facility; RULES VIOLATED: 30 TAC §335.2 and §335.4, by causing, suffering, allowing, or permitting the unauthorized storage, processing, and disposal of industrial solid waste (ISW); and 30 TAC §335.9(a)(1), by failing to maintain records of all ISW; PENALTY: $7,250; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Wayne Robinson dba Mustang Creek Bar-B-Q; DOCKET NUMBER: 2017-0915-PWS-E; TCEQ ID NUMBER: RN102673548; LOCATION: 33734 United States Highway 59, Louise, Wharton County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §§290.46(f)(4), 290.106(e), and 290.122(c)(2)(A) and (f), by failing to report the results of nitrate sampling to the executive director (ED) for the January 1 - December 31, 2014 and January 1 - December 31, 2015 monitoring periods, and failing to issue public notification, and submit a copy of the public notification to the ED regarding the failure to report the results of nitrate sampling to the ED for the January 1 - December 31, 2014 and January 1 - December 31, 2015 monitoring periods; 30 TAC §290.46(f)(4) and §290.118(e), by failing to report the results of secondary constituents sampling to the ED for the January 1 - December 31, 2013 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to report the results of nitrate sampling to the ED for the January 1 - December 31, 2012 and January 1 - December 31, 2013 monitoring periods, regarding the failure to collect five routine distribution coliform samples during the month following a total coliform-positive sample result for the month of November 2014, and regarding the failure to collect a routine distribution water sample for coliform analysis for the month of November 2015; PENALTY: $472; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201802941
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 2, 2018

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Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill Permit No. 62033

Application. Rock n Roll Material, Inc., 2530 Merrell Road, Dallas, Texas 75229, has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62033). The proposed development concerns a tract of land of approximately 2.68 acres located at 10920 Goodnight Lane, Dallas, Texas 75220, and consists of an enclosed retail showroom and office building

with a total first floor footprint of about 4,375 square feet, second floor area of about 553 square feet, and associated outside storage, driveways, parking areas, and support utilities. The development permit application is available for viewing and copying at Bachman Lake Branch Library, 9480 Webb Chapel Road, Dallas, Texas 75220, and may be viewed online at http://rebrand.ly/rocknroll. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.876889&lng=-96.899842&zoom=13&type=r. For the exact location, refer to the application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Rock n Roll Material, Inc. at the address stated above or by calling Mr. Isaias Padilla or Ms. Margarita Padilla at (214) 704-1553.

TRD-201802961
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 2, 2018

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 35, 37, 50, 55, 80, 281, 290, 291, and 293

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The rulemaking is proposed to implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013, to amend requirements related to the transfer of the utilities and rates program to the Public Utility Commission of Texas; HB 294, 85th Texas Legislature, 2017, to amend requirements related to appointment of a receiver to a water or sewer utility that has violated a final judgment issued by district court in a suit brought by the attorney general; SB 1842, 85th Texas Legislature, 2017 to amend requirements related to entities exempted from the requirement to file a business plan for a proposed public drinking water system; and staff proposed changes to facilitate the ability to convert the Regulatory Assessment Fee from a self-report, self-pay fee to an online billed fee.

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Brian Dickey, Water Supply Division, (512) 239-0963.

TRD-201802903
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 29, 2018

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 305, 331 and 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to §305.62 of 30 TAC Chapter 305, Consolidated Permits; §331.84 and §331.107 of 30 TAC Chapter 331, Underground Injection Control; and §336.1115 of 30 TAC Chapter 336, Radioactive Substance Rules, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement a federal rule update and respond to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association in October 2016 (Project No. 2017-005-PET-NR; approved on December 15, 2016, to initiate rulemaking) to modify rules in 30 TAC in order to fulfill the requirements of an Agreement State program for *in-situ* uranium mining operations and also to clarify and streamline rules.

The commission will hold a public hearing on this proposal in Austin on August 9, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2017-017-336-WS. The comment period closes August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Bobby Janecka, Radioactive Materials Unit, (512) 239-6415.

TRD-201802869
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 29, 2018

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Lauren Staton at (512) 463-5800.

Deadline: Personal Financial Statement due April 30, 2018

Antonio Abad, 2122 Colcord Avenue, Waco, Texas 76707

Lou Ann Cloy, P.O. Box 280, Village Mills, Texas 77663

Leslie Bingham Escareno, 7 Medical Drive, Brownsville, Texas 78520

Romanita Matte-Barrera, 510 Adams, San Antonio, Texas 78210

Jose Menendez, 7715 Windmill Hill, San Antonio, Texas 78229

Arnoldo Saenz, 422 Agnes Street, Premont, Texas 78375

Michelle M. Skyrme, 133 E. Regan Street, Palestine, Texas 75801

Colette P. Walls, 10961 CR 1541, Sinton, Texas 78387

Stanley S. Wang, 6200 Olympic Overlook, Austin, Texas 78746

Eric D. White, P.O. Box 177, Harper, Texas 78631

Jay R. Winter, 7801 CR 6300, Lubbock, Texas 79043

TRD-201802850
Seana Willing
Executive Director
Texas Ethics Commission
Filed: June 28, 2018

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 23, 2018 to April 27, 2018. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, July 6, 2018. The public comment period for this project will close at 5:00 p.m. on Monday, August 6, 2018.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Corpus Christi Authority

Location: Aransas Channel at Harbor Island Road in Port Aransas, Nueces County

Latitude & Longitude (NAD 83): 27.850902, -97.066514

Project Description: The applicant proposes to construct a commercial 140-foot-long by 4-foot-wide pier with a 10-foot by 10-foot terminal platform. A 0.22-acre parking lot will be constructed for pier parking/access. The parking lot construction will result in approximately 0.08 acre of permanent fill material within an estuarine high marsh. The pier and terminal platform construction will result in approximately 0.006 acre of permanent shading of sea grasses and emergent wetland. Also, an 18-inch reinforced concrete pipe will be installed perpendicular to the entry driveway and parallel to Harbor Island Road to facilitate stormwater drainage.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2018-00280. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 18-1244-F1

Applicant: City of Port Aransas

Location: Corpus Christi Bay and adjacent wetlands on bayside of Mustang Island at the Mustang Beach Airport

Latitude & Longitude (NAD 83): 28.814528, -97.093205

Project Description: The applicant proposes to: 1) construct a taxiway turnaround on the northwest end of the existing runway; 2) extend the existing runway and parallel taxiway to the southeast; 3) construct an apron north of the extended runway; and, 4) relocate an existing drainage ditch to the north of the proposed runway extension. These activities would result in permanent placement of fill material within approximately 2.11 acres of aquatic resources. The impacted resources would include: approximately 1.1 acres of palustrine emergent wetland, approximately 0.1 acre of estuarine emergent/tidal flat wetland, approximately 0.6 acre of estuarine emergent/scrub-shrub (mangrove) wetland, approximately 0.03 acre of estuarine open water, and approximately 0.28 acre of man-made ditch.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2018-00189. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 18-1245-F1

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Army Corps of Engineers (USACE)

Project Description: USACE, in partnership with Jefferson County and Sabine Neches Navigation District, has selected a plan for ecosystem restoration. The plan incorporated marsh and Gulf Intracoastal Waterway (GIWW) shoreline restoration features which are critical to the stabilization and sustainment of the critical marsh resources. The plan includes marsh restoration and/or nourishment and construction of rock breakwater features. Construction would be on lands owned by Texas Parks and Wildlife Department JD Murphree Wildlife Management Area, U.S. Fish and Wildlife Service McFaddin National Wildlife Refuge, and private lands.

CMP Project No.: 18-1254-F2

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201802953
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: July 2, 2018

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Texas Groundwater Protection Committee

Proposed Texas Groundwater Protection Strategy Update

Pursuant to Texas Water Code, §26.405(2), the Texas Groundwater Protection Committee (TGPC or committee) has begun the process of updating its Texas Groundwater Protection Strategy (Strategy), and files this notice in accordance with Texas Government Code, §2001.023(a) and (b), which states that an agency must give at least 30 days' notice of its intention to adopt a rule before adoption, and that the agency must file notice of the proposed rule with the Secretary of State for publication in the *Texas Register*.

SUMMARY

Created by the 71st Legislature in 1989, the TGPC strives to identify areas where new or existing Texas groundwater programs could be enhanced, as well as improve coordination among the state agencies and statewide organizations involved in groundwater-related activities. The TGPC also provides a means for the public to interact with groundwater experts.

One of the TGPC's legislative mandates is to develop and update a comprehensive groundwater protection strategy for the state that provides guidelines for groundwater conservation and the prevention of groundwater contamination.

The comprehensive strategy for protecting groundwater in Texas includes both the TGPC member's internal programs and the TGPC's internal processes outlined in the proposed Strategy update.

The current Strategy can be found at:

https://www.tceq.texas.gov/assets/public/comm_exec/pubs/as/188.pdf.

Three versions of the proposed Strategy update can be found at:

http://tgpc.texas.gov/strategy/AS_188_2pg_01Mar2018.pdf.

This two-page version can be printed double-sided on one 11" x 17" piece of paper and folded in half. This is the preferred printing method.

http://tgpc.texas.gov/strategy/AS_188_3pg_01Mar2018.pdf

This three-page version is web friendly. That is, it is accessible, and it is presented online in a browser tab the way that someone would read the two-page hard copy - the front page, the entire inside two pages, and then the back page.

http://tgpc.texas.gov/strategy/AS_188_4pg_01Mar2018.pdf

For those who do not have access to 11" x 17" paper, this four-page version can be printed on 8.5" x 11" pieces of paper (single-sided or double-sided) and stapled together.

Note that the top two links in the box at the bottom of the last page do not work right now, but they will be valid in November 2018 when the document is anticipated to be published.

PUBLIC COMMENT

The committee invites public comment on its proposed Texas Groundwater Protection Strategy update. Any interested persons may submit data, views, or written arguments to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference TGPC-Texas Groundwater Protection Strategy. Comments must be received by 5:00 p.m., August 13, 2018. For further information or questions concerning this proposal, please contact Cary Betz, Designated Chairman, Texas Groundwater Protection Committee, at (512) 239-4506.

TRD-201802952
Cary Betz
Chair
Texas Groundwater Protection Committee
Filed: July 2, 2018

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Indian Health Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 14, 2018, at 1:30 p.m., to re-

ceive comment on proposed Medicaid payment rates for Indian Health Services.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC also will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Indian Health Services are proposed to be effective January 1, 2018.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code, §355.8620, which addresses the reimbursement methodology for services provided in Indian Health Service and tribal facilities.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://rad.hhs.texas.gov/rate-packets on or after August 1, 2018. Interested parties may obtain a copy of the briefing package on or after August 1, 2018, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201802936
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2018

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the 1st Quarter Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 14, 2018, at 1:30 p.m., to receive comment on the proposed Medicaid payment rates for the 1st Quarter Healthcare Common Procedure Coding System (HCPCS) Updates.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC also will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the 1st Quarter HCPCS review of procedure codes C9464, C9465, C9466, C9467, C9469, C9794, Q2041, Q5103, and Q5104 are proposed to be effective October 1, 2018.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.8085, which addresses the reimbursement methodology for physicians and other practitioners.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://rad.hhs.texas.gov/rate-packets on or after August 1, 2018. Interested parties may obtain a copy of the briefing package on or after August 1, 2018, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing, so appropriate arrangements can be made.

TRD-201802938
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2018

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 14, 2018, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC also will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282,

which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective October 1, 2018, for the following services:

Birthing Centers;

Nervous System Surgery;

Orthotic and Prosthetic Devices;

General and Integumentary System Surgery;

Respiratory Therapists;

Physician Administered Drugs (Non-Oncology); and

Physician Administered Drugs (Oncology).

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8181, which addresses birthing center reimbursement; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payment rates will be available at http://rad.hhs.texas.gov/rate-packets on or after August 1, 2018. Interested parties may obtain a copy of the briefing package on or after August 1, 2018, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201802937
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2018

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Proposed Final Report on the Long Term Care Plan for FY 2018-2019

Final Report on the Plan on Long-Term Care for Persons with an Intellectual Disability or Related Conditions for Fiscal Years 2018-2019 is available on the HHSC website at: https://hhs.texas.gov/laws-regulations/reports-presentations. Alternatively, interested parties may request a free copy of the proposed LTC Plan by contacting the HHSC Quality Reporting Unit by U.S. mail, telephone, or by email at the address below.

Health & Human Services Commission

Quality Reporting Unit

Office of the Quality Monitoring Program & Initiatives

Medicaid & Chip Services

Medical & Social Services

701 West 51st Street, Mail Code W510

Austin, Texas 78751

Janet.fletcher@hhsc.state.tx.us

(512) 458-4350

TRD-201802932
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2018

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Texas Department of Housing and Community Affairs

Notice to Public and to All Interested Mortgage Lenders Texas Department Of Housing and Community Affairs Mortgage Credit Certificate Program

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low, and moderate income first-time homebuyers with the purchase of a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described herein may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program, and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner, provided that such credit allowed in any taxable year does not exceed $2,000. In order to qualify to receive a mortgage credit certificate, the homebuyer must qualify for a conventional, FHA, VA, USDA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The mortgage credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that mortgage credit certificates remain available under the Program. No mortgage credit certificates will be issued prior to ninety (90) days from the date of publication of this notice or after the date that all of the credit certificate amount has been allocated to homebuyers, and in no event will mortgage credit certificates be issued later than the date permitted by federal tax law.

In order to satisfy the eligibility requirements for a mortgage credit certificate under the Program:

(a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided;

(b) the prospective homebuyer's current income must not exceed:

(1) for families of three or more persons, 115% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code") of the area median income; and

(2) for individuals and families of two persons, 100% (120% in certain targeted areas or in certain cases permitted under applicable provisions of the Code) of the area median income.

(c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code);

(d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code) of the average area purchase price applicable to the residence; and

(e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage (except in certain cases permitted under applicable provisions of the Code).

To obtain additional information on the Program, including the boundaries of current targeted areas, as well as the current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy), please contact Sue Nance at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; telephone (512) 475-3356.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Sue Nance at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-3356. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of Section 25 of the Code and Treasury Regulation Section 1.25-3T(j)(4) issued thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-201802935
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 2, 2018

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Texas Lottery Commission

Scratch Ticket Game Number 2022 "Hunting for Hundreds"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2022 is "HUNTING FOR HUNDRED$". The play style is "key symbol match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2022 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2022.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, BINOCULARS PLAY SYMBOL, TENT PLAY SYMBOL, $2.00, $4.00, $5.00, $10.00, $15.00, $40.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

FIGURE 1: GAME NO. 2022 – 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
BINOCULARS SYMBOL	WIN
TENT SYMBOL	WINALL
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$40.00	FRTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2022), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers

start with 001 and end with 125 within each Pack. The format will be: 2022-0000001-001.

H. Pack - A Pack of the "HUNTING FOR HUNDRED$" Scratch Ticket Game contains 125 Tickets. One Ticket will be folded over to expose a front and back of one ticket on each pack. Please note the packs will be in an A, B, C, and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HUNTING FOR HUNDRED$" Scratch Ticket Game No. 2022.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HUNTING FOR HUNDRED$" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 20 (twenty) Play Symbols. If a player reveals a "BINOCULARS" Play Symbol, the player wins the PRIZE for that Play Symbol. If a player reveals a "TENT" Play Symbol, the player WINS ALL 10 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. FIND: A non-winning Prize Symbol will never match a winning Prize Symbol.

D. FIND: A Ticket will not have matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

E. FIND: The "TENT" (WINALL) Play Symbol will only appear once on intended winning Tickets as dictated by the prize structure.

F. FIND: When the "TENT" (WINALL) Play Symbol is used, there will be no occurrence of a winning Play Symbol and, if applicable, no occurrence of any other special features (i.e., auto wins or multipliers).

G. FIND: No prize amount in a non-winning spot will correspond with the Play Symbol (i.e., 2 and $2).

H. FIND: The "BINOCULARS" (WIN) Play Symbol and the "TENT" (WINALL) Play Symbol will never appear together on the same Ticket in any combination.

2.3 Procedure for Claiming Prizes.

A. To claim a "HUNTING FOR HUNDRED$" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $15.00, $40.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B of these Game Procedures.

B. To claim a "HUNTING FOR HUNDRED$" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HUNTING FOR HUNDRED$" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.C of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HUNTING FOR HUNDRED$" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "HUNTING FOR HUNDRED$" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2022. The approximate number and value of prizes in the game are as follows:

FIGURE 2: GAME NO. 2022 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	736,320	9.62
$4	509,760	13.89
$5	84,960	83.33
$10	99,120	71.43
$15	84,960	83.33
$40	11,800	600.00
$100	23,600	300.00
$1,000	20	354,000.00
$30,000	5	1,416,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.57. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2022 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2022, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201802956
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 2, 2018

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Scratch Ticket Game Number 2055 "Lucky 7s Hunt"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2055 is "LUCKY 7s HUNT." The play style is "coordinate with prize legend."

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2055 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2055.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible color LUCKY GRID Play Symbols are: LADY BUG SYMBOL, LEMON SYMBOL, ORANGE SYMBOL, STRAWBERRY SYMBOL, DICE SYMBOL, HORSESHOE SYMBOL, BELL SYMBOL, DIAMOND SYMBOL, MONEY STACK SYMBOL, GOLD COIN SYMBOL, CROWN SYMBOL and LUCKY 7 SYMBOL. The possible black LUCKY NUMBERS Play Symbols and LUCKY GRID Overprint Numbers are: 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48 and 49.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The LUCKY GRID Overprint Numbers will not have captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

FIGURE 1: GAME NO. 2055 - 1.2D

LUCKY GRID PLAY SYMBOLS	CAPTION
LADY BUG SYMBOL	
LEMON SYMBOL	
ORANGE SYMBOL	
STRAWBERRY SYMBOL	
DICE SYMBOL	
HORSESHOE SYMBOL	
BELL SYMBOL	
DIAMOND SYMBOL	
MONEY STACK SYMBOL	
GOLD COIN SYMBOL	
CROWN SYMBOL	
LUCKY 7 SYMBOL	
LUCKY GRID OVERPRINT NUMBERS	**CAPTION**
10	
11	
12	
13	
14	
15	
16	
18	
19	
20	
21	
22	
23	
24	
25	
26	
28	
29	
30	
31	
32	
33	
34	

35	
36	
38	
39	
40	
41	
42	
43	
44	
45	
46	
48	
49	
LUCKY NUMBERS PLAY SYMBOLS	**CAPTION**
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX

38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2055), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2055-0000001-001.

H. Pack - A Pack of "LUCKY 7s HUNT" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "LUCKY 7s HUNT" Scratch Ticket Game No. 2055.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LUCKY 7s HUNT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 18 (eighteen) LUCKY NUMBERS Play Symbols. There are also 36 (thirty-six) LUCKY GRID Play Symbols covered by 36 (thirty-six) LUCKY GRID Overprint Numbers. There are a total of 54 (fifty-four) Play Symbols. The player must scratch all of the 18 LUCKY NUMBERS. Then, the player must scratch ONLY the LUCKY GRID Overprint Numbers found in the LUCKY GRID that exactly match the LUCKY NUMBERS to expose the color LUCKY GRID Play Symbols. If the player has revealed 3 matching LUCKY GRID Play Symbols, the player wins the corresponding prize in the PRIZE LEGEND. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption; the LUCKY GRID Overprint Numbers will not have captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the LUCKY NUMBERS Play Symbols must be printed in black ink; each of the LUCKY GRID Play Symbols will be printed in full color;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols and 36 (thirty-six) Overprint Numbers must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols and 36 (thirty-six) Overprint Numbers on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to five (5) times.

D. The PRIZE LEGEND will appear as follows: 3 LADY BUG Play Symbols win $5. 3 LEMON Play Symbols win $10. 3 ORANGE Play Symbols win $15. 3 STRAWBERRY Play Symbols win $20. 3 DICE Play Symbols win $25. 3 HORSESHOE Play Symbols win $50. 3 BELL Play Symbols win $100. 3 DIAMOND Play Symbols win $250. 3 MONEY STACK Play Symbols win $500. 3 GOLD COIN Play Symbols win $1,000. 3 CROWN Play Symbols win $5,000. 3 LUCKY 7 Play Symbols win $100,000.

E. There will be twelve (12) different LUCKY GRID scenes.

F. There are a total of twelve (12) different symbols used in each scene.

G. On each Ticket, the LUCKY NUMBERS Play Symbols will be different.

H. On each Ticket, all the LUCKY GRID overprint numbers will be different and will not include seventeen (17), twenty-seven (27), thirty-seven (37) or forty-seven (47).

I. There will be six (6) rows of six (6) squares in the LUCKY GRID play area. Each square will contain one (1) LUCKY GRID overprint number.

J. Each LUCKY NUMBERS Play Symbol will reveal exactly one (1) LUCKY GRID Play Symbol in the LUCKY GRID play area.

K. Base printed numbers in the LUCKY GRID play area will match the LUCKY GRID overprint numbers in the LUCKY GRID play area.

L. Non-winning LUCKY GRID Play Symbols will never be revealed more than two (2) times in the LUCKY GRID play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7s HUNT" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY 7s HUNT" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 7s HUNT" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LUCKY 7s HUNT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LUCKY 7s HUNT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in the Scratch Ticket Game No. 2055. The approximate number and value of prizes in the game are as follows:

FIGURE 2: GAME NO. 2055 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	896,000	8.04
$10	448,000	16.07
$15	256,000	28.13
$20	128,000	56.25
$25	104,000	69.23
$50	67,200	107.14
$100	22,000	327.27
$250	1,000	7,200.00
$500	500	14,400.00
$1,000	10	720,000.00
$5,000	10	720,000.00
$100,000	4	1,800,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.74. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2055 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2055, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201802957
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 2, 2018

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Public Utility Commission of Texas

Announcement of Application to Amend a State-Issued Certificate of Franchise Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 25, 2018, to amend a state-issued certificate of franchise authority (SICFA).

Project Title and Number: Application of Cebridge Acquisition, L.P. dba Suddenlink Communications to Amend a State-Issued Certificate of Franchise Authority, Project Number 48485.

The applicant seeks to amend its SICFA No. 90015 to expand its service area footprint to include the cities of Brownsboro, Murchison, Gilmer, Kemp and Idalou.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 48485.

TRD-201802851
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 28, 2018

♦ ♦ ♦

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 28, 2018, in accordance with Public Utility Regulatory Act §§54.151 - 54.156.

Docket Title and Number: Application of Visual Intermedia Solutions, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 48495.

Applicant seeks to provide facilities-based, data, and resale telecommunication services throughout the State of Texas.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than July 20, 2018. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48495.

TRD-201802958
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2018

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Notice of Application for Transfer Pursuant to Public Utility Regulatory Act §37.154

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 31, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §37.154.

Docket Style and Number: Joint Application of Lighthouse Electric Cooperative, Inc. and Southwestern Public Service Company for Transfer of Certain Facilities and Associated Certificate Rights in Floyd County, Docket Number 48418.

The Application: On May 31, 2018, Lighthouse Electric Cooperative, Inc. (Lighthouse) and Southwestern Public Service Company (SPS) filed an application for approval to transfer Lighthouse CCN number 30104 rights to SPS. The transfer will include an approximately 6-mile-long segment of 69 kV transmission line (including easements) located in Floyd County between the Lockney Rural and Briscoe substations.

Persons wishing to intervene or comment on the action sought should contact the Commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48418.

TRD-201802944
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission Of Texas
Filed: July 2, 2018

♦ ♦ ♦

Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity in Montgomery County.

Docket Style and Number: Application of MSEC Enterprises, Inc. to Amend its Water Certificate of Convenience and Necessity in Montgomery County, Docket Number 48491.

The application: On June 26, 2018, MSEC Enterprises, Inc. filed an application to amend its water certificate of convenience and necessity (CCN) No. 12887. The purpose of the requested amendment is to provide water service requested by the landowner in an area with no current retail water utility service. The affected service area requested includes approximately 40 acres and 0 customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48491.

TRD-201802906
Andrea Gonzalez
Assistant Rules Coordinator
Public Utilities Commission of Texas
Filed: July 2, 2018

♦ ♦ ♦

Notice of Application to Amend and Decertify a Portion of Its Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to decertify a portion of sewer certificate of convenience and necessity in Kaufman County.

Docket Style and Number: Application of the City of Kemp to Amend a Sewer Certificate of Convenience and Necessity in Kaufman County, Docket Number 48446.

The Application: On June 7, 2018, the City of Kemp filed an application to decertify a portion of sewer certificate of convenience and necessity (CCN) No. 20611. A portion of the certificated area is outside of the municipal boundaries, has no sewer customers, and has limited resources to provide continuous and adequate sewer service to the affected area. The City of Kemp requests that the Commission decertify the portion of the CCN outside of its municipal boundaries.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48446.

TRD-201802950
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2018

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Notice of Application to Amend Eligible Telecommunications Carrier and Amend Eligible Telecommunications Provider Designations

The Public Utility Commission of Texas gives notice of an application filed on June 29, 2018, to amend eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) designations under 16 Texas Administrative Code (TAC) §§26.417 and 26.418, respectively.

Docket Title and Number: Application of Virgin Mobile USA, L.P. to Amend its Designation as an Eligible Telecommunications Carrier and its Designation as an Eligible Telecommunications Provider, Docket Number 48502.

The Application: Virgin Mobile USA, L.P. (Virgin Mobile) filed an application to amend its designations as an ETC and as an ETP. Virgin Mobile requested this amendment to include additional exchanges where it holds spectrum and offers wireless service in the territory of additional incumbent local exchange companies (ILECs). Virgin Mobile included the list of relevant ILECs in the application and provided maps, as exhibit 5 to the application, showing the exchanges located in the service territories of the applicable rural ILECs. Under 16 TAC §§26.417(f)(2)(A)(i) and 26.418 (h)(2)(A)(i), the effective date is August 12, 2018.

Persons who wish to comment upon the action sought should notify the commission no later than August 2, 2018. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48502.

TRD-201802951
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2018

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on June 22, 2018, a petition to amend a water certificate of convenience and necessity (CCN) in Kaufman County by expedited release.

Docket Style and Number: Petition of EQK Bridgeview Plaza, LLC to Amend High Point Water Supply Corporation's Certificate of Convenience and Necessity in Kaufman County by Expedited Release, Docket Number 48484.

The Petition: EQK Bridgeview Plaza, LLC filed a petition for expedited release of approximately 2807 acres of land within High Point Water Supply Corporation's water CCN No. 10841 in Kaufman County under Texas Water Code §13.254(a-5) and 16 Texas Administrative Code §24.113(l).

Persons wishing to file a written protest or motion to intervene and file comments on the petition should contact the commission no later than July 23, 2018, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48484.

TRD-201802960
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2018

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Notice of Petition for Cease and Desist Order

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 29, 2018, a request for a cease and desist order.

Docket Style and Number: Petition of Agua Special Utility District for a Cease and Desist Order Against the City of Palmview, Docket No. 48497.

The Application: Agua Special Utility District (Agua) filed a petition for an order directing the City of Palmview (Palmview) to cease and desist from continuing to construct wastewater lines to provide retail water service within Agua's service area. Agua stated that Palmview is constructing wastewater lines and facilities without consent in territory covered by Agua certificates of convenience and necessity numbers 10559 and 20785.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48497.

TRD-201802959
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2018

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Graham, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Graham; TxDOT CSJ No.: 1803GRAHM.

The TxDOT Project Manager is Ed Mayle.

Scope: Provide engineering and design services, including construction administration, to:

1. Rehabilitate and mark Runway 03/21;
2. Rehabilitate and mark Runway 18/36:
3. Rehabilitate and mark parallel taxiways;
4. Rehabilitate and mark hangar access taxiways;
5. Conduct pavement strength evaluation;
6. Install Precision Approach Path Indicator - Runway 03; and

7. Construct new hangar access taxiway west to Terminal building.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 8%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, the future scope of work items at the Graham Municipal Airport may include the following:

Expand public apron and construct hangar access taxiway.

The City of Graham reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, project diagram, and most recent Airport Layout Plan are available online at http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Graham Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, or by phone at (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than August 3, 2018, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at http://txdot.gov/government/funding/egrants-2016/aviation.html

An instructional video on how to respond to a solicitation in eGrants is available at http://txdot.gov/government/funding/egrants-2016/aviation.html

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201802847
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: June 27, 2018

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Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, August 9, 2018, at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the proposed 2019-2022 Statewide Transportation Improvement Program (STIP).

The STIP reflects the federally funded transportation projects in the FY 2019-2022 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

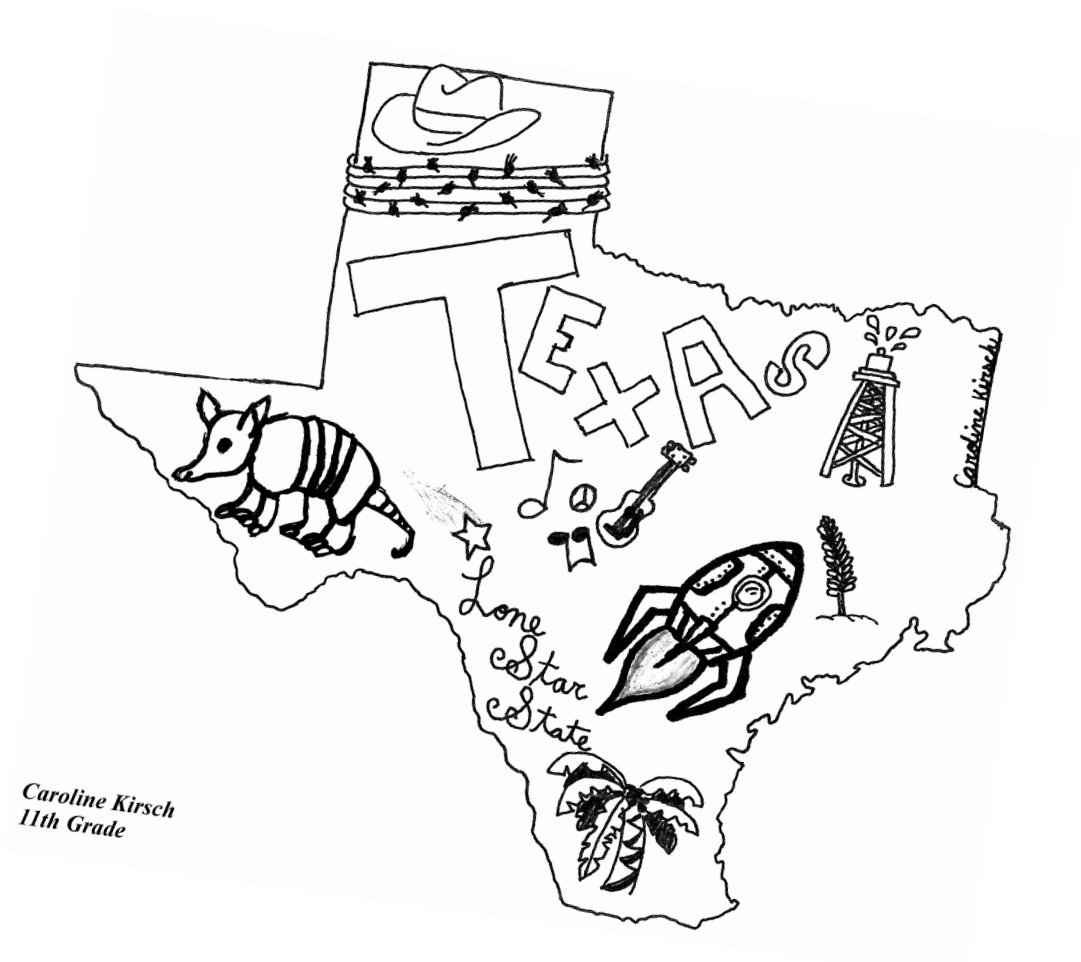
A copy of the proposed FY 2019-2022 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at: *http://www.txdot.gov/government/programs/stips.html.*

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 no later than Wednesday, August 8, 2018, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5053. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed FY 2019-2022 STIP to Peter N. Smith P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Tuesday, August 28, 2018.

TRD-201802868
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: June 29, 2018

♦ ♦ ♦



Caroline Kirsch
11th Grade

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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