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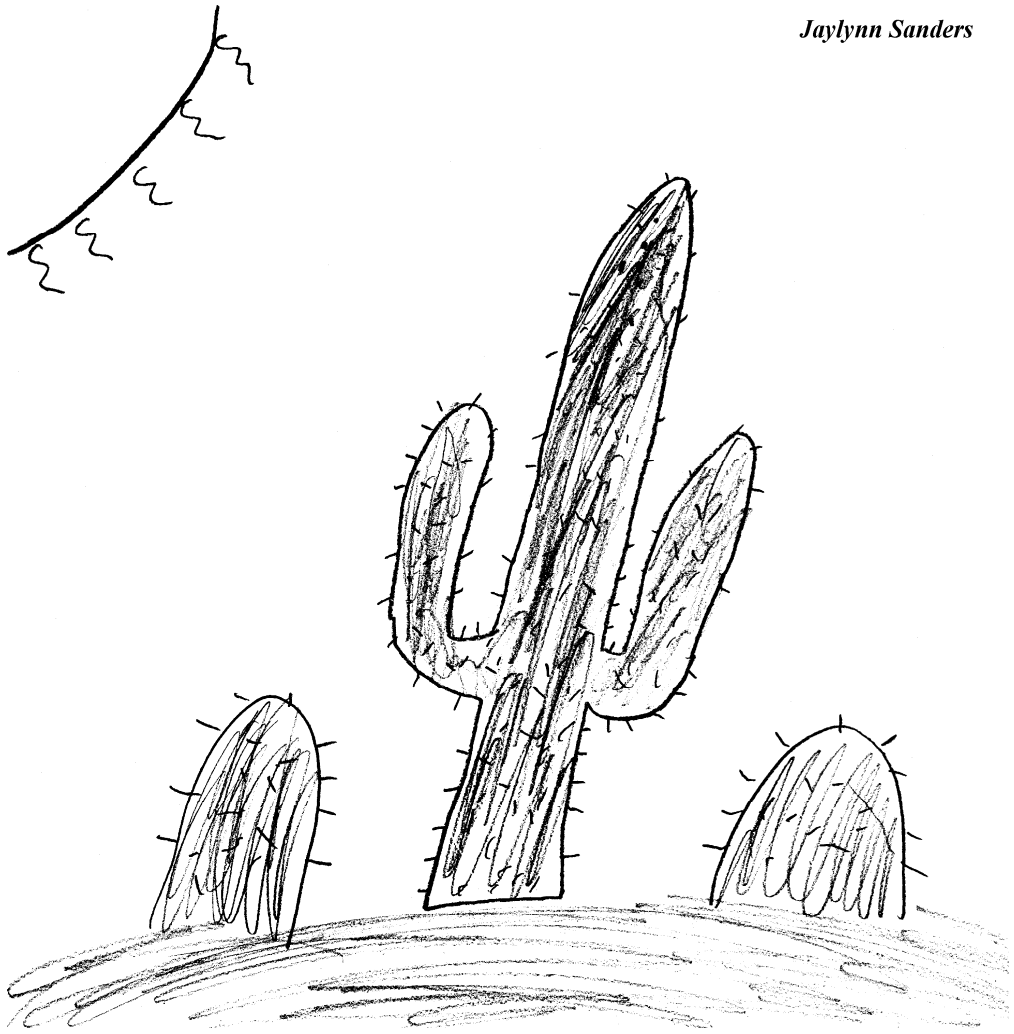
Jaylynn Sanders



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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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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§24.3, 24.8, 24.11, 24.14

The Public Utility Commission of Texas (commission) proposes the repeal part of Subchapter A: General Provisions §§24.3, 24.8, 24.11, 24.14, Subchapter B: Rates, Rate-Making and Rates/Tariff Changes §§24.21 - 24.24, §24.26, §§24.28 - 24.36, Subchapter C: Rate-Making Appeals §§24.41 - 24.44, Subchapter D: Records and Reports §§24.71 - 24.76, Subchapter E: Customer Service and Protection §§24.80 - 24.90, Subchapter F: Quality of Service §§24.91 - 24.95, Subchapter G: Certificates of Convenience and Necessity §§24.101 - 24.107, §§24.109 - 24.111, §§24.113 - 24.120, Subchapter H: Water Utility Submetering and Allocation §§24.121 - 24.127, Subchapter I: Wholesale Water or Sewer Service §§24.128 - 24.138, Subchapter J: Enforcement, Supervision and Receivership, §§24.140 - 24.144, §24.146, §24.147, Subchapter K: Provision Regarding Municipalities §§24.150 - 24.153, relating to substantive rules applicable to water and sewer service providers and proposes new subchapters and new §§24.3, 24.8, 24.11, 24.14, Subchapter B: Rates and Tariffs §§24.25, 24.27, 24.29, 24.31, 24.33, 24.35, 24.37, 24.39, 24.41, 24.43, 24.44, 24.47, 24.49, Subchapter C: Alternative Rate Methods §24.75, Subchapter D: Rate-Making Appeals §§24.101, 24.103, 24.105, 24.107, Subchapter E: Records and Reports §§24.125, 24.127, 24.129, 24.131, 24.133, 24.135, Subchapter F: Customer Service and Protection §§24.151, 24.153, 24.155, 24.157, 24.159, 24.161, 24.163, 24.165, 24.167, 24.169, 24.171, Subchapter G: Quality of Service §§24.201, 24.203, 24.205, 24.207, 24.209, Subchapter H: Certificates of Convenience and Necessity §§24.225, 24.227, 24.229, 24.231, 24.233, 24.235, 24.237, 24.239, 24.241, 24.243, 24.245, 24.247, 24.249, 24.251, 24.253, 24.255, 24.257, 24.259, Subchapter I: Water Utility Submetering and Allocation §§24.275, 24.277, 24.279, 24.281, 24.283, 24.285, 24.287, Subchapter J: Wholesale Water or Sewer Service §§24.301, 24.303, 24.305, 24.307, 24.309, 24.311, 24.313, 24.315, 24.317, 24.319, 24.321, Subchapter K: Enforcement, Supervision, and Receivership §§24.351, 24.353, 24.355, 24.357, 24.359, 24.361, 24.363, Subchapter L: Provisions Regarding Municipalities §§24.375, 24.377, 24.379, and 24.381 relating to substantive rules applicable to water and sewer service providers. There will be no changes to §§24.1, 24.2, 24.4, 24.5, 24.6, 24.9, 24.12, 24.15, 24.45.

The proposed repeals and new sections will renumber the subject sections only. Project Number 48526 is assigned to this proceeding.

Stephen Journeay, Commission Counsel, Office of Policy and Docket Management, has determined that for the first five-year period the proposed repeals and new sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

Stephen Journeay has determined that for each year of the first five years the proposed repeals and new sections are in effect the public benefit anticipated as a result of enforcing the sections will be administrative ease.

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

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 repeals and new sections. There is no significant economic cost anticipated for persons who are required to comply with the proposed repeals and new sections. 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 new sections as proposed.

Pursuant to Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed repeals and new sections. The agency has determined that for each year of the first five years that the proposed repeals and new sections are in effect, the following statements will apply:

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

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

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

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

(5) the proposed rules will not create a new regulation;

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

(7) the proposed rules will not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rules 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 §2001.029 of the Administrative Procedure Act, Tex. Gov't Code Ann. §2001.029 (West 2016 and Supp. 2017), at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 11, 2018. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed repeal and new sections 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 comments to the proposed repeals and new sections are required to be filed by §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 48526.

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.3. Definitions of Terms.
§24.8. Administrative Completeness.
§24.11. Financial Assurance.
§24.14. Emergency Orders and Emergency Rates.
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 26, 2018.

TRD-201803219
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 9, 2018
For further information, please call: (512) 936-7223

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SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

16 TAC §§24.21 - 24.24, 24.26, 24.28 - 24.36

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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§24.23. Time between Filings.
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§24.30. Escrow of Proceeds Received under Rate Increase.
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§24.32. Rate Design.
§24.33. Rate-case Expenses Pursuant to Texas Water Code §13.187 and §13.1871.
§24.34. Alternative Rate Methods.
§24.35. Jurisdiction of Commission over Certain Water or Sewer Supply Corporations.
§24.36. Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872.
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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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER C. RATE-MAKING APPEALS

16 TAC §§24.41 - 24.44

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.41. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.
§24.42. Contents of Petition Seeking Review of Rates Pursuant to the Texas Water Code, §13.043(b).
§24.43. Refunds During Pendency of Appeal.
§24.44. Seeking Review of Rates for Sales of Water Under the Texas Water Code §12.013.
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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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER D. RECORDS AND REPORTS

16 TAC §§24.71 - 24.76

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.71. General Reports.
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§24.74. Maintenance and Location of Records.
§24.75. Management Audits.
§24.76. Regulatory Assessment.

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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Andrea Gonzalez
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Public Utility Commission of Texas
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SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

16 TAC §§24.80 - 24.90

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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§24.88. Discontinuance of Service.
§24.89. Meters.
§24.90. Continuity of Service.

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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Andrea Gonzalez
Assistant Rules Coordinator
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SUBCHAPTER F. QUALITY OF SERVICE

16 TAC §§24.91 - 24.95

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.91. Applicability.
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§24.95. Standards of Construction.

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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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.101 - 24.107, 24.109 - 24.111, 24.113 - 24.120

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.101. Certificate of Convenience and Necessity Required.

§24.102. Criteria for Granting or Amending Certificate of Convenience and Necessity.

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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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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER H. WATER UTILITY SUBMETERING AND ALLOCATION

16 TAC §§24.121 - 24.127

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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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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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER I. WHOLESALE WATER OR SEWER SERVICE

16 TAC §§24.128 - 24.138

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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§24.132. Evidentiary Hearing on Public Interest.

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§24.136. Burden of Proof.

§24.137. Commission Order to Discourage Succession of Rate Disputes.

§24.138. Filing of Rate Data.

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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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §§24.140 - 24.144, 24.146, 24.147

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.140. Enforcement Action.
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§24.147. 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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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER K. PROVISIONS REGARDING MUNICIPALITIES

16 TAC §§24.150 - 24.153

The repeals are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.150. Jurisdiction of Municipality: Surrender of Jurisdiction.
§24.151. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.
§24.152. Notification Regarding Use of Revenue.
§24.153. 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.

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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§24.3, 24.8, 24.11, 24.14

The new subchapters and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.3. 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, less accumulated depreciation; 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.

(2) Active connections--Water or sewer connections currently being used to provide retail water or sewer service, or wholesale service.

(3) ADFIT--Accumulated deferred federal income tax--The amount of income-tax deferral, typically reflected on the balance sheet, produced by deferring the payment of federal income taxes by using tax-advantageous methods such as accelerated depreciation.

(4) Affected county--A county to which Local Government Code, Chapter 232, Subchapter B, applies.

(5) 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.

(6) 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.

(7) 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 Department of Insurance Division of Workers' Compensation, and institutions for higher education) which makes rules or determines contested cases.

(8) 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. A non-municipal allocation is the division of plant, revenues, expenses, taxes and reserves between affiliates, jurisdictions, rate regions, business units, functions, or customer classes defined within a retail public utility's operations for all retail public utilities and affiliates.

(9) Amortization--The gradual extinguishment of an amount in an account by distributing the amount over a fixed period (such as over the life of the asset or liability to which it applies).

(10) Annualization--An adjustment to bring a utility's accounts to a 12-month level of activity.

(11) Base rate--The portion of a consumer's utility bill that is paid for the opportunity to receive utility service, which does not vary due to changes in utility service consumption patterns.

(12) 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.

(13) Block rates--A rate structure set by using blocks, typically inclining cost for increased usage, which changes the cost per 1,000 gallons as usage increases to the next block.

(14) Certificate of Convenience and Necessity (CCN)--A permit issued by the 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. Certificate or Certificate of Public Convenience and Necessity have the same meaning.

(15) Class A Utility--A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(16) Class B Utility--A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 10,000 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(17) Class C Utility--A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. A Class C utility filing an application under TWC §13.1871 shall be subject to all requirements applicable to Class B utilities filing an application under TWC §13.1871. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(18) Commission--The Public Utility Commission of Texas or a presiding officer, as applicable.

(19) 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 TWC.

(20) Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(21) Customer class--A description of utility service provided to a customer that denotes such characteristics as nature of use or type of rate. For rate-setting purposes, a group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

(22) Customer service line or pipe--The pipe connecting the water meter to the customer's point of consumption or the pipe that conveys sewage from the customer's premises to the service provider's service line.

(23) District--District has the meaning assigned to it by TWC §49.001(a).

(24) 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.

(25) Financial assurance--The demonstration that sufficient or adequate financial resources exist to operate and manage the utility and to provide continuous and adequate service to the utility's service area and/or requested area.

(26) Functional cost category--Costs related to a particular operational function of a utility for which annual operations & maintenance expenses and utility plant investment records are maintained.

(27) Functionalization--The assignment or allocation of costs to utility functional cost categories.

(28) General rate revenue--A rate or the associated revenues designed to recover the cost of service other than certain costs separately identified and recovered through a pass-through or any spe-

cific rate such as a surcharge. For water and wastewater utilities, rates typically include the base rate and gallonage rate.

(29) Inactive connections--Water or wastewater connections tapped to the applicant's utility and that are not currently receiving service from the utility.

(30) 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.

(31) Intervenor--A person, other than the applicant, respondent, or the commission staff representing the public interest, who is permitted by this chapter or by ruling of the presiding officer, to become a party to a proceeding.

(32) Known and measurable (K&M)--Verifiable on the record as to amount and certainty of effectuation. Reasonably certain to occur within 12 months of the end of the test year.

(33) 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.

(34) License--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(35) 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 TWC.

(36) Main--A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(37) 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.

(38) 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 within a water supply or sewer service corporation's service area, 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.

(39) 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 TWC §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.

(40) Multi-jurisdictional--A utility that provides water and/or wastewater service in more than one state, country, or separate rate jurisdiction by its own operations, or through an affiliate.

(41) Municipality--A city, existing, created, or organized under the general, home rule, or special laws of this state.

(42) 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.

(43) Net Book Value--The amount of the asset that has not yet been recovered through depreciation. It is the original cost of the asset minus accumulated depreciation.

(44) Nonfunctioning system or utility--A system that is operating as a retail public utility that is required to have a CCN and is operating without a CCN; or a retail public utility under supervision in accordance with §24.353 of this title (relating to Supervision of Certain Utilities); or 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, in accordance with §24.355 of this title (relating to Operation of Utility that Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.357 of this title (relating to Operation of a Utility by a Temporary Manager).

(45) Person--Includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.

(46) 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.

(47) Potable water--Water that is used for or intended to be used for human consumption or household use.

(48) Potential connections--Total number of active plus inactive connections.

(49) Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(50) Protestor--A person who is not a party to the case who submits oral or written comments. A person classified as a protestor does not have rights to participate in a proceeding other than by providing oral or written comments.

(51) Public utility--The definition of public utility is that definition given to a water and sewer utility in this subchapter.

(52) Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(53) Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(54) 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 TWC §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(55) Rate region--An area within Texas for which the applicant has set or proposed uniform tariffed rates by customer class.

(56) 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.

(57) 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 §24.167 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

(58) Requested area--The area that a petitioner or applicant seeks to obtain, add to, or remove from a retail public utility's certificated service area.

(59) 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.

(60) 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.

(61) Return on invested capital--The rate of return times invested capital.

(62) 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 TWC 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.

(63) Service area--Area to which a retail public utility is obligated to provide retail water or sewer utility service.

(64) 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.

(65) Sewage--Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(66) Stand-by fee--A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(67) 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.

(68) 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.

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

(70) Temporary rate for services provided for a nonfunctioning system--A temporary rate for a retail public utility that takes over the provision of service for a nonfunctioning retail public water or sewer utility service provider.

(71) Temporary water rate provision for mandatory water use reduction--A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(72) Test year--The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

(73) Tract of land--An area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties; such other land includes roads and railroads. A tract of land may be acquired through multiple deeds or shown in separate surveys.

(74) TWC--Texas Water Code.

(75) Utility--The definition of utility is that definition given to water and sewer utility in this subchapter.

(76) 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.

(77) Water supply or sewer service corporation--Any nonprofit corporation organized and operating under TWC chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws 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 utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility 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 bylaws include language indicating that the factors specified in subparagraphs (A)-(C) of this paragraph are in effect.

(78) Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility due to emergency conditions or drought.

(79) 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.

§24.8. Administrative Completeness.

(a) Any application under chapter 24, except as otherwise noted by this chapter, shall be reviewed for administrative completeness within 30 calendar days from the date the application is file stamped by the commission's Central Records office. If the applicant is required to issue notice, the applicant shall be notified upon determination that the notice or application is administratively complete.

(b) If the commission determines that any deficiencies exist in an application, statement of intent, or other requests for commission action addressed by this chapter, the application or filing may be rejected and the effective date suspended, as applicable, until the deficiencies are corrected.

(c) In cases involving a proposed sale, transfer, merger, consolidation, acquisition, lease, or rental, of any water or sewer system or utility owned by an entity required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an application is received and file stamped by the commission's Central Records office and public notice is provided, unless notice is waived for good cause shown.

(d) Applications under subchapter H of chapter 24 are not considered filed until the commission makes a determination that the application is administratively complete.

§24.11. Financial Assurance.

(a) Purpose. This section establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.

(b) Application. This section applies to new and existing owners or operators of retail public utilities that are required to provide financial assurance pursuant to this chapter.

(c) Financial assurance must be demonstrated by compliance with subsection (d) or (e) of this section, unless the commission requires compliance with both subsections (d) and (e) of this section.

(d) Irrevocable stand-by letter of credit. Irrevocable stand-by letters of credit must be issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation. The retail public utility must use the standard form irrevocable stand-by letter of credit approved by the commission. The irrevocable stand-by letter of credit must be irrevocable for a period not less than five years, payable to the commission, and permit a draw to be made in part or in full. The irrevocable stand-by letter of credit must permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit if the retail public utility has failed to provide continuous and adequate service or the retail public utility cannot demonstrate its ability to provide continuous and adequate service.

(e) Financial test.

(1) An owner or operator may demonstrate financial assurance by satisfying a financial test including the leverage and operations tests that conform to the requirements of this section, unless the commission finds good cause exists to require only one of these tests.

(2) Leverage test.

To satisfy this test, the owner or operator must meet one or more of the following criteria:

(A) The owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets;

(B) The owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt payments;

(C) The owner or operator must have sufficient unrestricted cash available as a cushion for two years of debt service. Restricted cash includes monetary resources that are committed as a debt service reserve which will not be used for operations, maintenance or other payables;

(D) The owner or operator must have an investment-grade credit rating from Standard & Poor's Financial Services LLC, Moody's Investors Service, or Fitch Ratings Inc.; or

(E) The owner or operator must demonstrate that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The affiliated interest must be found to satisfy the requirements of subparagraphs (A), (B), (C), or (D) of this paragraph.

(3) Operations test. The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. An affiliated interest may provide a written guarantee of coverage of temporary cash shortages. The affiliated interest of the owner or operator must satisfy the leverage test.

(4) To demonstrate that the requirements of the leverage and operations tests are being met, the owner or operator shall submit the following items to the commission:

(A) An affidavit signed by the owner or operator attesting to the accuracy of the information provided. The owner or operator may use the affidavit included with an application filed pursuant to §24.233 of this title (relating to Contents of Certificate of Convenience and Necessity Applications) pursuant to the commission's form for the purpose of meeting the requirements of this subparagraph; and

(B) A copy of one of the following:

(i) the owner or operator's independently audited year-end financial statements for the most recent fiscal year including the "unqualified opinion" of the auditor; or

(ii) compilation of year-end financial statements for the most recent fiscal year as prepared by a certified public accountant (CPA); or

(iii) internally produced financial statements meeting the following requirements:

(I) for an existing utility, three years of projections and two years of historical data including a balance sheet, income

statement and an expense statement or evidence that the utility is moving toward proper accountability and transparency; or

(II) for a proposed or new utility, start up information and five years of pro forma projections including a balance sheet, income statement and expense statement or evidence that the utility will be moving toward proper accountability and transparency during the first five years of operations. All assumptions must be clearly defined and the utility shall provide all documents supporting projected lot sales or customer growth.

(C) In lieu of meeting the leverage and operations tests, if the applicant utility is a city or district, the city or district may substantiate financial capability with a letter from the city's or district's financial advisor indicating that the city or district is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate service and providing the document in subparagraph (B)(i) of this paragraph.

(5) If the applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of $100,000, the applicant must provide the following:

(A) The owner must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers if the application is a sale, transfer, or merger; or

(B) The owner must submit loan approval documents or firm capital commitments affirming funds are available to install plant and equipment necessary to serve projected customers in the first two years of projections or a new water system or substantial addition to a currently operating water system if the application includes added CCN area with the intention of serving a new area or subdivision.

(6) If the applicant is a nonfunctioning utility, as defined in §24.3(44) of this title (relating to Definitions of Terms), the commission may consider other information to determine if the proposed certificate holder has the capability of meeting the leverage and operations tests.

§24.14. Emergency Orders and Emergency Rates.

(a) The commission may issue emergency orders in accordance with the Texas Water Code Chapter 13, Subchapter K-1 under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing:

(1) to appoint a person under §24.355 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.357 of this title (relating to Operation of a Utility by a Temporary Manager), or Texas Water Code §13.4132 to temporarily manage and operate a utility that has discontinued or abandoned operations or that is being referred to the Office of the Texas Attorney General for the appointment of a receiver under Texas Water Code §13.412;

(2) 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 retail 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 inactions;

(3) 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 discontinuance of service or serious impairment in service is imminent or has occurred;

(4) to authorize an emergency rate increase if necessary to ensure the provision of continuous and adequate retail water or sewer service to the utility's customers pursuant to Texas Water Code §13.4133:

(A) for a utility for which a person has been appointed under Texas Water Code §13.4132 to temporarily manage and operate the utility; or

(B) for a utility for which a receiver has been appointed under Texas Water Code §13.412;

(5) to compel a retail public utility to make specified improvements and repairs to the water or sewer system(s) owned or operated by the utility pursuant to Texas Water Code §13.253(b):

(A) 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;

(B) after providing a retail public utility notice and an opportunity to be heard at an open meeting of the commission; and

(C) if the retail public utility has provided financial assurance under Texas Health and Safety Code §341.0355 or Texas Water Code Chapter 13;

(6) to order an improvement in service or an interconnection pursuant to Texas Water Code §13.253(a)(1)-(3).

(b) The commission may establish reasonable compensation for temporary service ordered under subsection (a)(3) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(c) For an emergency order issued pursuant to subsection (a)(4) of this section and in accordance with §22.296 of this title (relating to Additional Requirements for Emergency Rate Increases):

(1) the commission shall coordinate with the TCEQ as needed;

(2) an emergency rate increase may be granted for a period not to exceed 15 months from the date on which the increase takes effect;

(3) the additional revenues collected under an emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service;

(4) the effective date of the emergency rates must be the first day of a billing cycle, unless otherwise authorized by the commission;

(5) any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of an increase that is not related to consumption may be billed at the emergency rate on the effective date or the first billing cycle after approval by the commission;

(6) the utility shall maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §24.41 of this title (relating to Cost of Service); and

(7) during the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §24.39 of this title (relating to Escrow of Proceeds Received under Rate Increase).

(d) The costs of any improvements ordered pursuant to subsection (a)(5) of this section may be paid by bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance. After notice and hearing, the commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

(e) An emergency order issued under this subchapter does not vest any rights and expires in accordance with its terms or this subchapter.

(f) An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days.

(g) An emergency order may be renewed once for a period not to exceed 180 days, except an emergency order issued pursuant to subsection (a)(4) of 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 26, 2018.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER B. RATES AND TARIFFS

16 TAC §§24.25, 24.27, 24.29, 24.31, 24.33, 24.35, 24.37, 24.39, 24.41, 24.43, 24.44, 24.47, 24.49

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.25. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as follows:

(1) A utility may charge the rates proposed under the Texas Water Code (TWC) §13.187 or §13.1871 on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the regulatory authority sets interim rates.

(2) The regulatory assessment fee required in TWC §5.701(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity.

(3) A person who possesses facilities used to provide retail water utility service or a utility that holds a certificate of public convenience and necessity (CCN) to provide retail water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for sewer services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(4) A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for CCNs.

(A) When applying to obtain or amend a CCN, or to add a new water or sewer system or subdivision to its certificated service area, every utility shall file its proposed tariff with the commission and any regulatory authority with original rate jurisdiction over the utility.

(i) For a utility that is under the original rate jurisdiction of the commission, the tariff shall contain schedules of all the utility's rates, tolls, charges, rules, and regulations pertaining to all of its utility service(s) when it applies for a CCN to operate as a utility. The tariff must be on the form prescribed by the commission or another form acceptable to the commission.

(ii) For a utility under the original rate jurisdiction of a municipality, the utility must file with the commission a copy of its tariff as approved by the municipality.

(B) If a person applying for a CCN is not a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person shall file a proposed tariff with the commission. The person filing the proposed tariff shall also:

(i) provide a rate study supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;

(ii) provide all calculations supporting the proposed rates;

(iii) provide all assumptions for any projections included in the rate study;

(iv) provide an estimated completion date(s) for the physical plant(s);

(v) provide an estimate of the date(s) service will begin for all phases of construction; and

(vi) provide notice to the commission once billing for service begins.

(C) A person who has obtained an approved tariff for the first time and is under the original rate jurisdiction of the commission shall file a rate change application within 18 months from the date service begins in order to revise its tariff to adjust the rates to a historic test year and to true up the new tariff rates to the historic test year. Any dollar amount collected under the rates charged during the test year in excess of the revenue requirement established by the commission during the rate change proceeding shall be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. An application for a price index rate adjustment under TWC §13.1872 does not satisfy the requirements of this subparagraph.

(D) Every water supply or sewer service corporation shall file with the commission a complete tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of

its utility services when it applies to operate as a retail public utility and to obtain or amend a CCN.

(2) Minor tariff changes. Except for an affected county or a utility under the original rate jurisdiction of a municipality, a utility's approved tariff may not be changed or amended without commission approval. Minor tariff changes shall not be allowed for any fees charged by affiliates. The addition of a new extension policy to a tariff or modification of an existing extension policy is not a minor tariff change. An affected county may change rates for retail water or sewer service without commission approval, but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The commission, or regulatory authority, as appropriate, may approve the following minor changes to utility tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by commission rules;

(iii) addition of the regulatory assessment fee payable to the TCEQ as a separate item or to be included in the currently authorized rate;

(iv) addition of a provision allowing a utility to collect retail sewer service charges in accordance with TWC §13.250(b)(2) or §13.147(d);

(v) rate adjustments to implement commission-authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs;

(vi) implementation of an energy cost adjustment clause under subsection (n) of this section;

(vii) implementation or modification of a pass-through provision calculation in a tariff, as provided in subparagraphs (B)-(F) of this paragraph, which is necessary for the correct recovery of the actual charges from pass-through entities, including line loss;

(viii) some surcharges as provided in subparagraph (G) of this paragraph;

(ix) modifications, updates, or corrections that do not affect a rate may be made to the following information contained in the tariff:

(I) the list of the cities, counties, and subdivisions in which service is provided;

(II) the public water system name(s) and corresponding identification number(s) issued by the TCEQ; and

(III) the sewer system names and corresponding discharge permit number(s) issued by the TCEQ.

(B) The commission, or other regulatory authority, as appropriate, may approve a minor tariff change for a utility to establish reduced rates for a minimal level of retail water service to be provided solely to a class of elderly customers 65 years of age or older to ensure that those customers receive that level of retail water service at more affordable rates. The regulatory authority shall allow a utility to establish a fund to receive donations to recover the costs of providing the reduced rates. A utility may not recover those costs through charges to its other customer classes.

(i) To request a rate as defined in this subparagraph, the utility must file a proposed plan for review by the commission. The plan shall include:

(I) A proposed plan for collection of donations to establish a fund to recover the costs of providing the reduced rates.

(II) The National Association of Regulatory Utility Commissioners (NARUC) account or subaccount name and number in which the donations will be accounted for, and a clear definition of how the administrative costs of operation of the program are accounted for and removed from the cost of service for rate making purposes. Any interest earned on donated funds will be considered a donation to the fund.

(III) An effective date of the program and an example of an annual accounting for donations received and a calculation of all lost revenues and the journal entries that transfer the funds from the account in clause (i) of this subparagraph to the utility's revenue account. The annual accounting shall be available to audit by the commission upon request.

(IV) An example bill with the contribution line item, if receiving contributions from customers.

(ii) For the purpose of clause (i) of this subparagraph, recovery of lost revenues from donations shall only include the lost revenues due to the difference in the utility's tariffed retail water rates and the reduced rates established by this subparagraph.

(iii) The minimal level of retail water service requested by the utility shall be no more than 3,000 gallons per month per connection. Additional gallons used shall be billed at the utility's tariffed rates.

(iv) For purposes of the provision in this subparagraph, a reduced rate authorized under this section does not:

(I) Make or grant an unreasonable preference or advantage to any corporation or person;

(II) Subject a corporation or person to an unreasonable prejudice or disadvantage; or

(III) Constitute an unreasonable difference as to retail water rates between classes of service.

(C) If a utility has provided proper notice as required in subparagraph (F) of this paragraph, the commission may approve a pass-through provision as a minor tariff change, even if the utility has never had an approved pass-through provision in its tariff. A pass-through provision may not be approved for a charge already included in the utility's cost of service used to calculate the rates approved by the commission in the utility's most recently approved rate change under TWC §13.187 or TWC §13.1871. A pass-through provision may only include passing through of the actual costs charged to the utility. Only the commission staff or the utility may request a hearing on a proposed pass-through provision or a proposed revision or change to a pass-through provision. A pass-through provision may be approved in the following situation(s):

(i) A utility that purchases water or sewage treatment and whose rates are under the original jurisdiction of the commission may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated.

(ii) A utility may pass through a temporary water rate provision implemented in response to mandatory reductions in water use imposed by a court, government agency, or other authority. The provision must specify how the temporary water rate provision is calculated.

(iii) A utility may include the addition of a production fee charged by a groundwater conservation district, including a production fee charged in accordance with a groundwater reduction plan entered into by a utility in response to a groundwater conservation district production order or rule, as a separate line item in the tariff.

(iv) A utility may pass through the costs of changing its source of water if the source change is required by a governmental entity. The pass-through provision may not be effective prior to the date the conversion begins. The pass-through provision must be calculated using an annual true-up provision.

(v) A utility subject to more than one pass-through cost allowable in this section may request approval of an overall combined pass-through provision that includes all allowed pass-through costs to be recovered in one provision under subparagraph (D) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up must remain constant, e.g., January through December.

(vi) A utility that has a combined pass-through provision in its approved tariff may request to amend its tariff to replace the combined pass-through provision with individual pass-through provisions if all revenues and expenses have been properly trued up in a true-up report and all over-collections have been credited back to the customers. A utility that has replaced its previously approved combined pass-through provision with individual provisions may not request another combined pass-through until three years after the replacement has been approved unless good cause is shown.

(D) A change in the combined pass-through provision may only be implemented once per year. The utility must file a true-up report within one month after the end of the true-up period. The report must reconcile both expenses and revenues related to the combined pass-through charge for the true-up period. If the true-up report reflects an over-collection from customers, the utility must change its combined pass-through rate using the confirmed rate changes to charges being passed through and the over-collection from customers reflected in the true-up report. If the true-up report does not reflect an over-collection from the customers, the implementation of a change to the pass-through rate is optional. The change may be effective in a billing cycle within three months after the end of the true-up period as long as the true-up clearly shows the reconciliation between charges by pass-through entities and collections from the customers, and charges from previous years are reconciled. Only expenses charged by the pass-through provider(s) shall be included in the provision. The true-up report shall include:

(i) a list of all entities charging fees included in the combined pass-through provision, specifying any new entities added to the combined pass-through provision;

(ii) a summary of each charge passed through in the report year, along with documentation verifying the charge assessed and showing the amount the utility paid;

(iii) a comparison between annual amounts billed by all entities charging fees included in the pass-through provision with amounts billed for the usage by the utility to its customers in the pass-through period;

(iv) all calculations and supporting documentation;

(v) a summary report, by year, for the lesser of all years prior or five years prior to the pass-through period showing the same information as in clause (iii) of this subparagraph with a reconciliation to the utility's booked numbers, if there is a difference in any year; and

(vi) any other documentation or information requested by the commission.

(E) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs shall be stated separately from all charges by the utility to recover the revenue requirement. Except for a combined pass-through provision, the calculation for a pass-through gallonage rate for a utility with one source of water may be made using the following equation, which is provided as an example: R=G /(1-L), where R is the utility's new proposed pass-through rate, G equals the new gallonage charge by source supplier or conservation district, and L equals the actual line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085). Line loss will be considered on a case-by-case basis.

(F) A utility that wishes to revise or implement an approved pass-through provision shall take the following actions prior to the beginning of the billing period in which the revision takes effect:

(i) file a written notice with the commission that must include:

(I) the affected CCN number(s);

(II) a list of the affected subdivision(s), public water system name(s) and corresponding number(s) issued by the TCEQ, and the water quality system name(s) and corresponding number(s) issued by the TCEQ, if applicable;

(III) a copy of the notice to the customers;

(IV) documentation supporting the stated amounts of any new or modified pass-through costs;

(V) historical documentation of line loss for one year;

(VI) all calculations and assumptions for any true-up of pass-through costs;

(VII) the calculations and assumptions used to determine the new rates; and

(VIII) a copy of the pages of the utility's tariff that contain the rates that will change if the utility's application is approved; and

(ii) e-mail (if the customer has agreed to receive communications electronically), mail, or hand-deliver notice to the utility's customers. Notice may be in the form of a billing insert and must contain:

(I) the effective date of the change;

(II) the present calculation of customer billings;

(III) the new calculation of customer billings;

(IV) an explanation of any corrections to the pass-through formula, if applicable;

(V) the change in charges to the utility for purchased water or sewer treatment or ground water reduction fee or subsidence, if applicable; and

(VI) the following language: "This tariff change is being implemented in accordance with the minor tariff changes allowed by 16 Texas Administrative Code §24.25. The cost to you as a result of this change will not exceed the costs charged to your utility."

(G) The following provisions apply to surcharges:

(i) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(ii) If authorized by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(I) sampling fees not already recovered by rates;

(II) inspection fees not already recovered by rates;

(III) production fees or connection fees not already recovered by rates charged by a groundwater conservation district; or

(IV) other governmental requirements beyond the control of the utility.

(iii) A utility shall use the revenues collected through a surcharge approved by the commission only for the purposes noted in the order approving the surcharge. A utility shall handle the funds in the manner specified in the order approving the surcharge. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the commission.

(iv) The commission may require a utility to file periodic and/or final accounting information to show the collection and disbursement of funds collected through an approved surcharge.

(3) Tariff revisions and tariffs filed with rate changes.

(A) If the commission is the regulatory authority, the utility shall file its revisions with the commission. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(B) Each revision must be accompanied by a copy of the original tariff and a red-lined copy of the proposed tariff revisions clearly showing the proposed changes.

(4) Rate schedule. Each rate schedule must clearly state the public water system name(s) and the corresponding identification number(s) issued by the TCEQ or the sewer system name(s) and the corresponding identification number(s) issued by the TCEQ for each discharge permit, subdivision, city, and county in which the schedule is applicable.

(5) Tariff pages. Tariff pages must be numbered consecutively. Each page must show section number, page number, name of the utility, and title of the section in a consistent manner.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, must contain sections setting forth:

(1) a table of contents;

(2) a list of the cities, counties, and subdivision(s) in which service is provided, along with the public water system name(s) and corresponding identification number(s) issued by the TCEQ and sewer system names and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;

(3) the CCN number(s) under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms to be completed as required by the TCEQ;

(6) the extension policy;

(7) an approved drought contingency plan as required by the TCEQ; and

(8) the forms of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariff attached is in compliance with the order, giving the docket number, date of the order, a list of tariff pages filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's tariff form or any modifications of a rule in the tariff must be clearly noted. All tariff pages must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariff must comply with the provisions of the order.

(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section shall be returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the commission its current tariff that has been authorized by the municipality. If changes are made to the utility's tariff for one or more service areas under the jurisdiction of the municipality, the utility shall file its tariff reflecting the changes along with the ordinance, resolution or order issued by the municipality to authorize the change.

(h) Effective date. The effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC §13.187 or §13.1871 is the proposed date on the notice to customers and the regulatory authority, unless suspended by the regulatory authority.

(i) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rates, rules, and regulations relating to utility service or extension of service, the CCN number(s), and all affected counties or cities. If changes are made to the water supply or sewer service corporation's tariff, the water supply or sewer service corporation shall file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection shall be filed in conformance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

(j) Temporary water rate provision for mandatory water use reduction.

(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority

orders mandatory water use reduction measures that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover revenues that the utility would otherwise have lost due to mandatory water use reductions. If a utility obtains an alternate water source to replace the required mandatory reduction during the time the temporary water rate provision is in effect, the temporary water rate provision must be adjusted to prevent over-recovery of revenues from customers. A temporary water rate provision may not be implemented if an alternative water supply is immediately available without additional cost.

(2) The temporary water rate provision must be approved by the regulatory authority having original jurisdiction in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate provision must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is:
Figure: 16 TAC §24.25(j)(3)

(A) The utility shall file a temporary water rate provision for mandatory water use reduction request and provide customer notice as required by the regulatory authority, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the customer class(es) affected, the rates affected, information on how to protest and/or intervene in the rate change, the address of the regulatory authority, the time frame for protests, and any other information that is required by the regulatory authority. The utility's existing rates are not subject to review in this proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.29 of this title (relating to Time Between Filings).

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method acceptable to the regulatory authority to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, it shall submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the regulatory authority in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate provision into effect only after:

(A) it has been approved by the regulatory authority and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility may readjust its temporary water rate provision to respond to modifications or changes to the original required water use reductions by reissuing notice as required by paragraph (7) of this subsection. If the commission is the regulatory authority, only the commission or the utility may request a hearing on the proposed implementation.

(7) A utility implementing a temporary water rate for mandatory water use reduction shall take the following actions prior to the beginning of the billing period in which the temporary water rate provision takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the regulatory authority; and

(B) e-mail, if the customer has agreed to receive communications electronically, or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate provision is implemented. If the commission is the regulatory authority, the notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from ($ per 1,000 gallons to $ per 1,000 gallons)."

(8) A utility shall stop charging a temporary water rate provision as soon as is practicable after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall notify its customers of the date that the temporary water rate provision ends and that its rates will return to the level authorized before the temporary water rate provision was implemented. The notice provided to customers regarding the end of the temporary water rate provision shall be filed with the commission.

(9) If the regulatory authority initiates an inquiry into the appropriateness or the continuation of a temporary water rate provision, it may establish the effective date of its decision on or after the date the inquiry is filed.

(k) Multiple system consolidation. Except as otherwise provided in subsection (m) of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(l) Regional rates. The regulatory authority, where practicable, shall consolidate the rates by region for applications submitted under TWC §13.187 or §13.1871 with a consolidated tariff and rate design for more than one system.

(m) Exemption. Subsection (k) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(n) Energy cost adjustment clause.

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff shall file a request with the commission. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, e-mail or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the date(s) of such delivery shall be filed with the commission by the utility as part of the request. Notice must be provided on the form prescribed by the commission for a rate application package filed under TWC §13.187 or §13.1871 and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the class(es) of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the commission.

(3) The commission's review of the utility's request is an uncontested matter not subject to a contested case hearing. However, the commission shall hold an uncontested public meeting if requested by a member of the legislature who represents an area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass-through, whether an increase or decrease, shall be implemented on at least an annual basis, unless the commission determines a special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection. Copies of notices to customers shall be filed with the commission,

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility shall take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) e-mail, if the customer has agreed to receive communications electronically, mail, either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly file the request or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission.

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case under TWC §§13.187, 13.1871, or 13.1872.

§24.27. Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871.

(a) Purpose. This section describes the requirements for the contents of an application to change rates and the requirements for the provision of notice pursuant to TWC §13.187 or §13.1871.

(b) Contents of the application. An application to change rates pursuant to TWC §13.187 or §13.1871 is initiated by the filing of a rate filing package, a statement of intent to change rates, and the proposed form and method of notice to customers and other affected entities pursuant to subsection (c) of this section.

(1) The application shall include the commission's rate filing package form and include all required schedules.

(2) The application shall be based on a test year as defined in §24.3(72) of this title (relating to Definitions of Terms).

(3) For an application filed pursuant to TWC §13.187, the rate filing package, including each schedule, shall be supported by pre-filed direct testimony. The pre-filed direct testimony shall be filed at the same time as the application to change rates.

(4) For an application filed pursuant to TWC §13.1871, the rate filing package, including each schedule, shall be supported by affidavit. The affidavit shall be filed at the same time as the application to change rates. The utility may file pre-filed direct testimony at the same time as the application to change rates. If the application is set for a hearing, the presiding officer may require the filing of pre-filed direct testimony at a later date.

(5) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the date(s) of such delivery shall be filed with the commission by the applicant utility as part of the rate change application.

(c) Notice requirements specific to applications filed pursuant to TWC §13.187.

(1) Notice of the application. In order to change rates pursuant to TWC §13.187, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a statement of intent (notice) with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice shall be provided using the commission-approved form and shall include a description of the process by which a ratepayer may intervene in the proceeding.

(C) This notice shall state the docket number assigned to the rate application. Prior to the provision of notice, the utility shall file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county.

(d) Notice requirements specific to applications filed pursuant to TWC §13.1871.

(1) Notice of the application. In order to change rates pursuant to TWC §13.1871, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a notice with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change and to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice shall be provided using the commission-approved form and shall include a description of the process by which a ratepayer may file a protest pursuant to TWC §13.1871(i).

(C) For Class B utilities, the notice shall state the docket number assigned to the rate application. Prior to providing notice, Class B utilities shall file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the following notice requirements shall apply.

(A) The commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice for the hearing, including notice to the governing body of each affected municipality and county.

(B) The utility shall mail notice of the hearing to each affected ratepayer at least 20 days before the hearing. The notice must include a description of the process by which a ratepayer may intervene in the proceeding.

(e) Line extension and construction policies. A request to approve or amend a utility's line extension and construction policy shall be filed in a rate change application under TWC §13.187 or §13.1871. The application filed under TWC §13.187 or §13.1871 must include the proposed tariff and other information requested by the commission. The request may be made with a request to change one or more of the utility's other rates.

(f) Capital improvements surcharge. In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from the customers pursuant to a surcharge to provide funds for capital improvements necessary to provide facilities capable of providing continuous and adequate utility service, and for the preparation of design and planning documents.

(g) Debt repayments surcharge. In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from customers pursuant to a surcharge to provide funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all of the requirements of the Texas Water Development Board in regard to financial assistance from the Safe Drinking Water Revolving Fund.

§24.29. Time Between Filings.

(a) Application. The following provisions are applicable to utilities, including those with consolidated or regional tariffs, under common control or ownership with any utility that has filed a statement of intent to increase rates pursuant to TWC §13.187 or §13.1871.

(b) A utility or two or more utilities under common control and ownership may not file a statement of intent to increase rates pursuant to TWC §13.187 or §13.1871 more than once in a 12-month period except:

(1) to implement an approved purchase water pass through provision;

(2) to adjust the rates of a newly acquired utility system;

(3) to comply with a commission order;

(4) to adjust rates authorized by §24.25(b)(2) of this title (relating to Form and Filing of Tariffs);

(5) when the regulatory authority requires the utility to deliver a corrected statement of intent; or

(6) when the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:

(A) cover reasonable and necessary operating expenses;

(B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements specific to utility operations; or

(C) support a determination that the utility is able to provide continuous and adequate service to its existing service area.

(c) A Class C utility under common control or ownership with a utility that has filed an application to change rates pursuant to TWC §13.187 or §13.1871 within the preceding 12 months may not file an application to change rates pursuant to TWC §13.187 or §13.1871 unless it is filed pursuant to an exception listed in subsection (b) of this section.

§24.31. Jurisdiction over Affiliated Interests.

(a) The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but not limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

(b) The owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; or

(2) the commission determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

§24.33. Suspension of the Effective Date of Rates.

(a) Regardless of, and in addition to, any period of suspension ordered pursuant to subsection (b) of this section, after written notice to the utility, the commission may suspend the effective date of a rate change for not more than:

(1) 150 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC §13.187; or

(2) 265 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC §13.1871.

(b) Regardless of, and in addition to, any period of suspension ordered pursuant to subsection (a) of this section, the commission may suspend the effective date of a change in rates requested pursuant to TWC §13.187 or §13.1871 if the utility:

(1) has failed to properly complete the rate application as required by §24.27 of this title (relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871), has failed to comply with the notice requirements and proof of notice requirements, or has for any other reason filed a request to change rates that is not deemed administratively complete until a properly completed request to change rates is accepted by the commission;

(2) does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity until a completed application to obtain or transfer a certificate of convenience and necessity is accepted by the commission; or

(3) is delinquent in paying the regulatory assessment fee and any applicable penalties or interest required by TWC §5.701(n) until the delinquency is remedied.

(c) If the commission suspends the effective date of a requested change in rates pursuant to subsection (b) of this section, the requirement under §24.35(b)(1) of this title (relating to Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871) to begin a hearing within 30 days of the effective date does not apply and the utility may not notify its customers of a new proposed effective date until the utility receives written notification from the commission that all deficiencies have been corrected.

(d) A suspension ordered pursuant to subsection (a) of this section shall be extended two days for each day a hearing on the merits exceeds 15 days.

(e) If the commission does not make a final determination on the proposed rate before the expiration of the suspension period described by subsections (a) and (d) of this section, the proposed rate shall be considered approved. This approval is subject to the authority of the commission thereafter to continue a hearing in progress.

(f) The effective date of any rate change may be suspended at any time during the pendency of a proceeding, including after the date on which the proposed rates are otherwise effective.

(g) For good cause shown, the commission may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended to the extent the proposed rate exceeds the existing rate.

§24.35. Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871.

(a) Purpose. This section describes requirements for the processing of applications to change rates filed pursuant to TWC §13.187 or §13.1871.

(b) Proceedings pursuant to TWC §13.187. The following criteria apply to applications to change rates filed by Class A utilities pursuant to TWC §13.187.

(1) Not later than the 30th day after the effective date of the change, the commission shall begin a hearing to determine the propriety of the change.

(2) The matter may be referred to the State Office of Administrative Hearings and the referral shall be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

(3) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference shall be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

(c) Proceedings pursuant to TWC §13.1871. The following criteria apply to applications to change rates filed by a Class B utility or a Class C utility pursuant to TWC §13.1871.

(1) The commission may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.

(2) The commission shall set the matter for a hearing if it receives a complaint from any affected municipality or protests from the lesser of 1,000 or 10 percent of the affected ratepayers of the utility over whose rates the commission has original jurisdiction, during the first 90 days after the effective date of the proposed rate change.

(A) Ratepayers may file individual protests or joint protests. Each protest must contain the following information:

(i) a clear and concise statement that the ratepayer is protesting a specific rate action of the water or sewer service utility in question; and

(ii) the name and service address or other identifying information of each signatory ratepayer. The protest shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer.

(B) For the purposes of this subsection, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The protest is properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

(3) Referral to SOAH at any time during the pendency of the proceeding is deemed to be setting the matter for hearing as required by paragraphs (1) and (2) of this subsection.

(4) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference shall be deemed to be the beginning of the hearing required by paragraph (2) of this subsection.

(d) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of the law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(e) The utility may begin charging the proposed rates on the proposed effective date, unless the proposed rate change is suspended by the commission pursuant to §24.33 of this title (relating to Suspension of the Effective Date of Rates) or interim rates are set by the presiding officer pursuant to §24.37 of this title (relating to Interim Rates). Rates charged under a proposed rate during the pendency of a proceeding are subject to refund to the extent the commission ultimately approves rates that are lower than the proposed rates.

§24.37. Interim Rates.

(a) The commission may, on a motion by the commission staff or by the appellant under TWC, §13.043(a), (b), or (f), as amended, establish interim rates to remain in effect until a final decision is made.

(b) At any time after the filing of a statement of intent to change rates under Chapter 13 of the TWC the commission staff may petition the commission to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates.

(c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(d) Interim rates may be established by the commission in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

(e) In making a determination under subsection (d) of this section, the commission may limit its consideration of the matter to oral arguments of the affected parties and may:

(1) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;

(2) deny interim rate relief; and

(3) require that all or part of the requested rate increase be deposited in an escrow account in accordance with §24.39 of this title (relating to Escrow of Proceeds Received under Rate Increase).

(f) The commission may also remand the request for interim rates to the State Office of Administrative Hearings for an evidentiary hearing on interim rates. The presiding officer shall issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.

(g) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(h) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments.

(i) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.

(j) The retail public utility shall provide a notice to its customers including the interim rates set by the commission or presiding officer with the first billing at the interim rates with the following wording: "The commission (or presiding officer) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established."

§24.39. Escrow of Proceeds Received under Rate Increase.

(a) Rates received during the pendency of a rate proceeding.

(1) During the pendency of its rate proceeding, a utility may be required to deposit all or part of the rate increase into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.

(2) The utility shall file a completed escrow agreement between the utility and the financial institution with the commission for review and approval.

(3) If necessary to meet the utility's current operating expenses, or for other good cause shown, the commission may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.

(4) The commission, except for good cause shown, shall give all parties-of-record at least 10 days notice of an intent to release funds from an escrow account. Any party may file a motion with the commission objecting to the release of escrow funds or to establish different terms and conditions for the release of escrowed funds.

(5) Upon the commission's establishment of final rates, all funds remaining in the escrow account shall be released to the utility or ratepayers in accordance with the terms of the commission's order.

(b) Surcharge revenues granted by commission order at the conclusion of a rate proceeding.

(1) A utility may be required to deposit all or part of surcharge funds authorized by the commission into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.

(2) Prior to collecting any surcharge revenues that are required to be escrowed, the utility shall submit for commission approval the completed escrow agreement between the utility and the financial institution. If the utility fails to promptly remedy any deficiencies in the agreement noted by the commission, the commission may suspend the collection of surcharge revenues until the agreement is properly amended.

(3) In order to allow the utility to complete the improvements for which surcharge funds were granted, the commission may authorize the release of funds to the utility from the escrow account after receiving a written request including appropriate documentation.

§24.41. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's test year expenses as adjusted for known and measurable changes may be considered. A change in rates must be based on a test year as defined in §24.3(72) of this title (relating to Definitions of Terms).

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in TWC §13.185(e));

(B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation is allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property is allowed in the cost of service. On all applications, the depreciation accrual for all assets must account for expected net salvage value in the calculation of the depreciation rate and actual net salvage value related to retired plant. The depreciation rate and expense must be calculated on a straight line basis over the expected or remaining life of the asset. Utilities must calculate depreciation on a straight line basis, but are not required to use the remaining life method if salvage value is zero. When submitting an application that includes salvage value in depreciation calculations, the utility must submit sufficient evidence with the application establishing that the estimated salvage value, including removal costs, is reasonable. Such evidence will be included for the asset group in deprecation studies for those utilities practicing group accounting while such evidence will relate to specific assets for those utilities practicing itemized accounting;

(C) assessments and taxes other than income taxes;

(D) federal income taxes on a normalized basis (federal income taxes must be computed according to the provisions of TWC §13.185(f), if applicable);

(E) funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership; and

(F) advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service shall not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the water or wastewater utility for services rendered to the public. The following expenses are the only expenses that shall be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:

(i) funds expended advertising methods of conserving water;

(ii) funds expended advertising methods by which the consumer can effect a savings in total water or wastewater utility bills; and

(iii) funds expended advertising water quality protection.

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A)-(F) of this paragraph;

(H) costs, including, but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission;

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and

(J) the costs of purchasing groundwater from any source if:

(i) the source of the groundwater is located in a priority groundwater management area; and

(ii) a wholesale supply of surface water is available.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(A) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(B) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital must be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital must be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital, also referred to as rate base. The rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:

(A) Original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service;

(B) Original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility; and

(i) For original cost under this subparagraph or under subparagraph (A) of this paragraph, cost of plant and equipment allowed in the cost of service that has been estimated by trending studies or other means, which has no historical records for verification purposes, may receive an adjustment to rate base and/or an adjustment to the rate of return on equity.

(ii) Original cost under this subparagraph or under subparagraph (A) of this paragraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system. On all assets retired from service after June 19, 2009, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation(s) in its net plant calculation(s) in the first full rate change application (excluding alternative rate method applications as described in §24.75 of this title (relating to Alternative Rate Methods)) it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset shall be combined with over accrual of depreciation expense for those assets retired after the estimated useful life or remaining life and the net amount shall be amortized over a reasonable period of time taking into account prudent regulatory principles. The following list shall govern the manner by which depreciation will be accounted for.

(I) Accelerated depreciation is not allowed.

(II) For those utilities that elect a group accounting approach, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:

(-a-) investment by homogenous category;

(-b-) expected level of gross salvage by category;

(-c-) expected cost of removal by category;

(-d-) the accumulated provision for depreciation as appropriately reflected on the company's books by category;

(-e-) the average service life by category;

(-f-) the remaining life by category;

(-g-) the Iowa Dispersion Pattern by category; and

(-h-) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.

(iii) Reserve for depreciation under this subparagraph or under subparagraph (A) of this paragraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life or remaining life of the asset. If individual accounting is used, a utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation shall include any additional depreciation expense accrued past the estimated useful or remaining life of the asset. If salvage value is zero, depreciation must be computed on a straight line basis over the expected useful life or remaining life of the item or facility. If salvage value is not zero, depreciation must also be computed on a straight line basis over the expected useful life or the remaining life. For an asset removed from service after June 19, 2009, accumulated depreciation will be calculated on book cost less net salvage of the asset. The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered. Return may be allowed for assets removed from service after June 19, 2009, that result in an increased rate base through recognition in the reserve for depreciation if the utility proves that the decision to retire the asset was financially prudent, unavoidable, necessary because of technological obsolescence, or otherwise reasonable. The utility must also provide evidence establishing the original cost of the asset, the cost of removal, salvage value, any other amounts recovered, the useful life of the asset (or remaining life as may be appropriate), the date the asset was taken out of service, and the accumulated depreciation up to the date it was taken out of service. Additionally, the utility must show that it used due diligence in recovering maximum salvage value of a retired asset. The requirements relating to the accounting for the reasonableness of

retirement decisions for individual assets and the net salvage value calculations for individual assets only apply to those utilities using itemized accounting. For those utilities practicing group accounting, the depreciation study will provide similar information by category. TWC §13.185(e) relating to dealings with affiliated interests, will apply to business dealings with any entity involved in the retirement, removal, or recovery of assets. Assets retired subsequent to June 19, 2009, will be included in a utility's application for a rate change if the application is the first application for a rate change filed by the utility after the date the asset was retired and specifically identified if the utility uses itemized accounting. Retired assets will be reported for the asset group in depreciation studies for those utilities practicing group accounting, while retired assets will be specifically identified for those utilities practicing itemized accounting;

(iv) the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC §13.185(e);

(v) utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital; and

(C) Working capital allowance to be composed of, but not limited to the following:

(i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service. This amount excludes inventories found by the commission to be unreasonable, excessive, or not in the public interest;

(ii) reasonable prepayments for operating expenses. Prepayments to affiliated interests are subject to the standards set forth in TWC §13.185(e); and

(iii) a reasonable allowance for cash working capital. The following shall apply in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for water and wastewater utilities shall in no event be greater than one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II) For Class C utilities, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass through provision or through charges other than base rate and gallonage charges, prepayments will be considered a reasonable allowance for cash working capital.

(III) For Class B utilities, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass through provision or charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(IV) For Class A utilities, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a-) The lead-lag study will use the cash method; all non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return (including interest on long-term debt and dividends on preferred stock), will not be considered.

(-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.

(-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the water or wastewater utility.

(-d-) All funds received by the water or wastewater utility except electronic transfers shall be considered available for use no later than the business day following the receipt of the funds in any repository of the water or wastewater utility (e.g., lockbox, post office box, branch office). All funds received by electronic transfer will be considered available the day of receipt.

(-e-) For water and wastewater utilities the balance of cash and working funds included in the working cash allowance calculation shall consist of the average daily bank balance of all noninterest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense shall be calculated by measurement of the interval between the midpoint of the annual service period and the actual payment date of the water or wastewater utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount shall be included in rate base.

(V) If cash working capital is required to be determined by the use of a lead-lag study under subclause (VI) of this clause and either the water or wastewater utility does not file a lead-lag study or the utility's lead-lag study is determined to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, zero will be presumed to be the reasonable level of cash working capital.

(VI) A lead lag study completed within five years of the application for rate/tariff change shall be deemed adequate for determining cash working capital unless sufficient persuasive evidence suggests that the study is no longer valid.

(VII) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (III) and (V) of this clause.

(3) Deduction of certain items from rate base, which include, but are not limited to, the following. Unless otherwise determined by the commission, for good cause shown, the following items will be deducted from the overall rate base in the consideration of applications filed pursuant to TWC §13.187 or §13.1871:

(A) accumulated reserve for deferred federal income taxes;

(B) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(C) contingency and/or property insurance reserves;

(D) contributions in aid of construction; and

(E) other sources of cost-free capital, as determined by the commission.

(4) Construction work in progress (CWIP). The inclusion of construction work in progress is an exceptional form of relief. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

(A) the inclusion is necessary to the financial integrity of the utility; and

(B) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress may not be allowed for any portion of a major project that the utility has failed to prove was efficiently and prudently planned and managed.

(5) Requirements for post-test year adjustments.

(A) A post-test year adjustment to test year data for known and measurable rate base additions may be considered only if:

(i) the addition represents a plant which would appropriately be recorded for investor-owned water or wastewater utilities in NARUC account 101 or 102;

(ii) the addition comprises at least 10% of the water or wastewater utility's requested rate base, exclusive of post-test year adjustments and CWIP;

(iii) the addition is in service before the rate year begins; and

(iv) the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(B) Each post-test year plant adjustment described by subparagraph (A) of this paragraph will be included in rate base at the reasonable test year-end CWIP balance, if the addition is constructed by the utility or the reasonable price, if the addition represents a purchase, is subject to original cost requirements, as specified in TWC §13.185.

(C) Post-test year adjustments to historical test year data for known and measurable rate base decreases will be allowed only if:

(i) the decrease represents:

(I) plant which was appropriately recorded in the accounts set forth in subparagraph (A) of this paragraph;

(II) plant held for future use;

(III) CWIP (mirror CWIP is not considered CWIP); or

(IV) an attendant impact of another post-test year adjustment.

(ii) the decrease represents aplant that has been removed from service, sold, or removed from the water or wastewater utility's books prior to the rate year; and

(iii) the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(d) Recovery of positive acquisition adjustments.

(1) For utility plant, property, and equipment acquired by a utility from another retail public utility as a sale, merger, etc. of utility service area for which an application for approval of sale has been filed with the commission on or after September 1, 1997, and that sale application closed thereafter, a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:

(A) the property is used and useful in providing water or sewer service at the time of the acquisition or as a result of the acquisition;

(B) reasonable, prudent, and timely investments will be made if required to bring the system into compliance with all applicable rules and regulations;

(C) as a result of the sale, merger, etc.:

(i) the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable water or sewer service;

(ii) regionalization of retail public utilities (meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service) was achieved; or

(iii) the acquiring system will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;

(D) any and all transactions between the buyer and the seller entered into as a part or condition of the sale are fully disclosed to the commission and were conducted at arm's length;

(E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and the amount of contributions in aid of construction in the system being acquired;

(F) in a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is where a stock transaction is followed by a transfer of assets in what is essentially a single sales transaction. A positive acquisition adjustment is allowed only in those cases where the multi-stage transaction was fully disclosed to the commission in the application for approval of the initial stock sale. Any multi-stage sale occurring between September 1, 1997 and February 4, 1999 is exempt from the requirement for commission notification at the time of the approval of the initial sale, but must provide such notification by April 5, 1999; and

(G) the rates charged by the acquiring utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.

(2) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(3) The authorization for and the amount of an acquisition adjustment can only be determined as a part of a rate change application.

(4) The acquisition adjustment can only be included in rates as a part of a rate change application.

(e) Negative acquisition adjustment. When a retail public utility acquires plant, property, or equipment pursuant to §24.239 of this chapter (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and the original cost of the acquired property less depreciation exceeds the actual purchase price, the utility shall

record the negative acquisition adjustment separately from the original cost of the acquired property. For purposes of ratemaking, the following shall apply:

(1) If a utility acquires plant, property, or equipment from a nonfunctioning retail public utility through a sale, transfer, or merger, receivership, or the utility is acting as a temporary manager, a negative acquisition adjustment shall be recorded and amortized on the utility's books with no effect on the utility's rates.

(2) If a utility acquires plant, property, or equipment from a retail public utility through a sale, transfer, or merger and paragraph (1) of this subsection does not apply, the commission may, at its sole discretion, recognize the negative acquisition adjustment in the ratemaking proceeding, by amortizing the negative acquisition adjustment through a bill credit for a defined period of time or by other means determined appropriate by the commission. Except for good cause found by the commission, the negative acquisition adjustment shall not be used to reduce the balance of invested capital.

(3) Notwithstanding paragraph (2) of this subsection, the acquiring utility may show cause as to why the commission should not account for the negative acquisition adjustment in the ratemaking proceeding.

(f) Intangible assets shall not be allowed in rate base unless:

(1) The amount requested has been verified by documentation as to amount and exact nature;

(2) Testimony has been submitted as to reasonableness and necessity and benefit of the expense to the customers; and

(3) The testimony must further show how the amount is properly considered as part of an actual asset purchased or installed, or a source of supply, such as water rights.

(4) If the requirements in paragraphs (1) and (2) of this subsection are met, but the requirement in paragraph (3) of this subsection is not met, the amount shall be amortized over a reasonable period and the amortization shall be allowed in the cost of service. The amount shall be considered a non-recurring expense. Unamortized amounts shall not be included in rate base for purposes of calculating return on equity.

§24.43. Rate Design.

(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses (unless an alternative rate method is used as set forth in §24.75 of this title (relating to Alternative Rate Methods), and preserve the financial integrity of the utility.

(b) Conservation.

(1) In order to encourage the prudent use of water or promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage within any customer class.

(2) After receiving final authorization from the regulatory authority through a rate change proceeding, a utility may implement a water conservation surcharge using an inclining block rate or other conservation rate structure. A utility may not implement such a rate structure to avoid providing facilities necessary to meet the TCEQ's minimum standards for public drinking water systems. A water conservation rate structure may generate revenues over and above the utility's usual cost of service:

(A) to reduce water usage or promote conservation either on a continuing basis or in specified restricted use periods identified in the utility's approved drought contingency plan required by 30 TAC §288.20 (TCEQ rules relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers) included in its tariff in order to:

(i) comply with mandatory reductions directed by a wholesale supplier or underground water district; or

(ii) conserve water supplies, maintain acceptable pressure or storage, or other reasons identified in its approved drought contingency plan;

(B) to generate additional revenues necessary to provide facilities for maintaining or increasing water supply, treatment, production, or distribution capacity.

(3) All additional revenues over and above the utility's usual cost of service collected under paragraph (2) of this subsection:

(A) must be accounted for separately and reported to the commission, as requested; and

(B) are considered customer contributed capital unless otherwise specified in a commission order.

(c) Volume charges. Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.

§24.44. Rate-case Expenses Pursuant to Texas Water Code §13.187 and §13.1871.

(a) A utility may recover rate-case expenses, including attorney fees, incurred as a result of filing a rate-change application pursuant to TWC §13.187 or TWC §13.1871, only if the expenses are just, reasonable, necessary, and in the public interest.

(b) A utility may not recover any rate-case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.

(c) A utility may not recover any rate-case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.

(d) Unamortized rate-case expenses may not be a component of invested capital for calculation of rate-of-return purposes.

§24.47. Jurisdiction of Commission over Certain Water or Sewer Supply Corporations.

(a) Notwithstanding any other law, the commission has the same jurisdiction over a water supply or sewer service corporation that the commission has under this chapter over a water and sewer utility if the commission finds, after notice and opportunity for hearing, that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with TWC, §67.007; or

(2) is operating in a manner that does not comply with the requirements for classification as a nonprofit water supply or sewer service corporation prescribed by TWC, §13.002(11) and (24).

(b) The commission's jurisdiction provided by this section ends if:

(1) the water supply or sewer service corporation voluntarily converts to a special utility district operating under TWC, Chapter 65;

(2) the time period specified in the commission order expires; or

(3) the water supply or sewer service corporation demonstrates that for the past 24 consecutive months it has conducted annual meetings as required by TWC, §67.007 and has operated in a manner that complies with the requirements for membership and nonprofit organizations as outlined in TWC, §13.002(11) and (24).

§24.49. Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872.

(a) Purpose. This section establishes procedures for a Class C utility to apply for an adjustment to its water or wastewater rates pursuant to TWC §13.1872.

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

(1) Application--an application for a rate adjustment filed pursuant to this section and TWC §13.1872.

(2) Price index--a price index established annually by the commission for the purposes of this section.

(c) Requirements for filing of the application. Subject to the limitations set out in subsection (f) of this section, a Class C utility may file an application with the commission.

(1) The utility may request to increase its tariffed monthly fixed customer or meter charges and monthly gallonage charges by the lesser of:

(A) five percent; or

(B) the percentage increase in the price index between the year preceding the year in which the utility requests the adjustment and the year in which the utility requests the adjustment.

(2) The application shall be on the commission's form and shall include:

(A) a proposal for the provision of notice that is consistent with subsection (e) of this section; and

(B) a copy of the relevant pages of the utility's currently approved tariff showing its current monthly fixed customer or meter charges and monthly gallonage charges.

(d) Processing of the application. The following criteria apply to the processing of an application.

(1) Determining whether the application is administratively complete.

(A) If commission staff requires additional information in order to process the application, commission staff shall file a notification to the utility within 10 days of the filing of the application requesting any necessary information.

(B) An application may not be deemed administratively complete pursuant to §24.8 of this title (relating to Administrative Completeness) until after the utility has responded to commission staff's request under subparagraph (A) of this paragraph.

(2) Within 30 days of the filing of the application, Staff shall file a recommendation stating whether the application should be deemed administratively complete pursuant to §24.8 of this title. If Staff recommends that the application should be deemed to be administratively complete, Staff shall also file a recommendation on final disposition, including, if necessary, proposed tariff sheets reflecting the requested rate change.

(e) Notice of Approved Rates. After the utility receives a written order by the commission approving or modifying the utility's application, including the proposed notice of approved rates, and at least 30 days before the effective date of the proposed change established in the commission's order, the utility shall send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, the approved or modified notice to each ratepayer describing the proposed rate adjustment. The notice must include:

(1) a statement that the utility requested a rate adjustment based on the commission's approved price index and must state the percentage change in the price index during the previous year;

(2) the existing rate;

(3) the approved rate; and

(4) a statement that the rate adjustment was requested pursuant to TWC §13.1872 and that a hearing will not be held for the request.

(f) Time between filings. The following criteria apply to the timing of the filing of an application.

(1) A Class C utility may adjust its rates pursuant to this section not more than once each calendar year and not more than four times between rate proceedings described by TWC §13.1871.

(2) Effective January 1, 2016, the filing of applications pursuant to this section is limited to a specific month based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below unless good cause is shown for filing in a different month. For a utility holding multiple CCNs, the utility may file an application in any month for which any of its CCN numbers is eligible.

(A) January: CCNs ending in 00 through 09;

(B) February: CCNs ending in 10 through 18;

(C) March: CCNs ending in 19 through 27;

(D) April: CCNs ending in 28 through 36;

(E) May: CCNs ending in 37 through 45.

(F) June: CCNs ending in 46 through 54;

(G) July: CCNs ending in 55 through 63;

(H) August: CCNs ending in 64 through 72;

(I) September: CCNs ending in 73 through 81;

(J) October: CCNs ending in 82 through 90; and

(K) November: CCNs ending in 91 through 99.

(g) Establishing the price index. The commission shall, on or before December 1 of each year, establish a price index as required by TWC §13.1872(b) based on the following criteria. The price index will be established in an informal project to be initiated by commission staff.

(1) The price index shall be equal to Gross Domestic Product Implicit Price Deflator index published by the Bureau of Economic Analysis of the United States Department of Commerce for the prior 12 months ending on September 30 unless the commission finds that good cause exists to establish a different price index for that year.

(2) For calendar year 2015, until the commission adopts its first order establishing a price index pursuant to this subsection, applications for an annual rate adjustment will use a price index percentage difference of 1.57%. The percentage difference of 1.57% is calculated using indices set in paragraph (3) of this subsection.

(3) For the purpose of implementing this section, the initial indices are equal to:

(A) 106.923 for 2014; and

(B) 108.603 for 2015.

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. ALTERNATIVE RATE METHODS

16 TAC §24.75

The new subchapter and section is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.75. Alternative Rate Methods.

(a) Alternative rate methods. To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The commission may prescribe modified rate filing packages for these alternate methods of establishing rates.

(b) Phased and multi-step rate changes. In a rate proceeding under TWC §13.187 or §13.1871, the commission may authorize a phased, stepped, or multi-year approach to setting and implementing rates to eliminate the requirement that a utility file another rate application.

(1) A utility may request to use the phased or multi-step rate method:

(A) to include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with TCEQ or commission regulations in the utility's rate base and operating expenses in the revenue requirement when facilities are placed in service;

(B) to provide additional construction funds after major milestones are met;

(C) to provide assurance to a lender that rates will be immediately increased when facilities are placed in service;

(D) to allow a utility to move to metered rates from unmetered rates as soon as meters can be installed at all service connections;

(E) to phase in increased rates when a utility has been acquired by another utility with higher rates;

(F) to phase in rates when a utility with multiple rate schedules is making the transition to a system-wide rate structure; or

(G) when requested by the utility.

(2) Construction schedules and cost estimates for new facilities that are the basis for the phased or multi-step rate increase must be prepared by a licensed professional engineer.

(3) Unless otherwise specified in the commission order, the next phase or step cannot be implemented without verification of completion of each step by a licensed professional engineer, agency inspector, or agency subcontractor.

(4) At the time each rate step is implemented, the utility shall review actual costs of construction versus the estimates upon which the phase-in rates were based. If the revenues received from the phased or multi-step rates are higher than what the actual costs indicate, the excess amount must be reported to the commission prior to implementing the next phase or step. Unless otherwise specified in a commission order, the utility may:

(A) refund or credit the overage to the customers in a lump sum; or

(B) retain the excess to cover shortages on later phases of the project. Any revenues retained but not needed for later phases must be proportioned and refunded to the customers at the end of the project with interest paid at the rate on deposits.

(5) The original notice to customers must include the proposed phased or multi-step rate change and informational notice must be provided to customers and the commission 30 days prior to the implementation of each step.

(6) A utility that requests and receives a phased or multi-step rate increase cannot apply for another rate increase during the period of the phase-in rate intervals unless:

(A) the utility can prove financial hardship; or

(B) the utility is willing to void the next steps of the phase-in rate structure and undergo a full cost of service analysis.

(c) Cash needs method. The cash needs method of establishing rates allows a utility to recover reasonable and prudently incurred debt service, a reasonable cash reserve account, and other expenses not allowed under standard methods of establishing rates.

(1) A utility may request to use the cash needs method of setting rates if:

(A) the utility is a nonprofit corporation controlled by individuals who are customers and who represent a majority of the customers; or

(B) the utility can demonstrate that use of the cash needs basis:

(i) is necessary to preserve the financial integrity of the utility;

(ii) will enable it to develop the necessary financial, managerial, and technical capacity of the utility; and

(iii) will result in higher quality and more reliable utility service for customers.

(2) Under the cash needs method, the allowable components of cost of service are: allowable operating and maintenance expenses; depreciation expense; reasonable and prudently incurred debt service costs; recurring capital improvements, replacements, and extensions that are not debt-financed; and a reasonable cash reserve account.

(A) Allowable operating and maintenance expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable operations and maintenance expenses and they must be based on the utility's test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.

(B) Depreciation expense. Depreciation expense may be included on any used and useful depreciable plant, property, or equipment that was paid for by the utility and that has a positive net book value on the effective date of the rate change in the same manner as described in §24.41(b)(1)(B) of this title (relating to Cost of Service).

(C) Debt service costs. Debt service costs are cash outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve account in escrow or as required by the commission, Texas Water Development Board, or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:

(i) self-financed major capital asset purchases where the useful life of the asset is ten years or more. Hypothetical debt service costs may include the debt repayments using an amortization schedule with the same term as the estimated service life of the asset using the prime interest rate at the time the application is filed; and

(ii) prospective loans to be executed after the new rates are effective. Any pre-commitments, amortization schedules, or other documentation from the financial institution pertaining to the prospective loan must be presented for consideration.

(D) Recurring capital improvements, replacements, and extensions that are not debt-financed. Capital assets, repairs, or extensions that are a part of the normal business of the utility may be included as allowable expenses. This does not include routine capital expenses that are specifically debt-financed.

(E) Cash reserve account. A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, must be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the commission. The utility shall account for these funds separately and report to the commission. Unless the utility requests an exception in writing and the exception is explicitly allowed by the commission in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund accompanied by a written explanation that explains the method used to calculate the amounts to be refunded. Each customer must receive the same refund amount. These reserves are not for the personal use of the management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the commission.

(3) If the revenues collected exceed the actual cost of service, defined in paragraph (2) of this subsection, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in paragraph (2)(E) of this subsection and are subject to the same restrictions.

(4) If the utility demonstrates to the commission that it has reduced expenses through its efforts, and has improved its financial, managerial, and technical capability, the commission may allow the utility to retain 50% of the savings that result for the personal use of the management or ownership of the utility rather than pass on the full amount of the savings through lower rates or refund all of the amounts saved to the customers.

(5) If a utility elects to use the cash needs method, it may not elect to use the utility method for any rate change application initiated within five years after beginning to use the cash needs method. If after the five-year period, the utility does elect to use the utility method, it may not include in rate base, or recover the depreciation expense, for the portion of any capital assets paid for by customers as a result of including debt service costs in rates. It may, however, include in rate base, and recover through rates, the depreciation expense for capital assets that were not paid for by customers as a result of including debt service costs in rates. The net book value of these assets may be recovered over the remaining useful life of the asset.

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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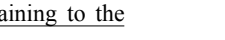

SUBCHAPTER D. RATE-MAKING APPEALS

16 TAC §§24.101, 24.103, 24.105, 24.107

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.101. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision

of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition on all parties to the original rate proceeding.

(b) An appeal under TWC §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water utility, sewer utility, or drainage rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(A) A municipally owned utility shall:

(i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and

(ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code Ann. §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any person. A municipally owned utility shall inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code Ann. §182.052 in any notice provided under the requirement of Tex. Water Code Ann. §13.043(i).

(C) In complying with this subsection, the municipally owned utility:

(i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;

(ii) shall provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and

(iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.

(4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users;

(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries; and

(6) in an appeal under this subsection, the retail public utility shall provide written notice of hearing to all affected customers in a form prescribed by the commission.

(d) In an appeal under TWC §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

(1) in an appeal under the TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;

(2) in an appeal under the TWC §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;

(3) establish the effective date;

(4) order refunds or allow surcharges to recover lost revenues;

(5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or

(6) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.

(1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amount(s) due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount(s) determined in the commission's order shall be refunded to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission.

(2) In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related

to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer shall initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission shall approve the water supply corporation's water conservation penalty if:

(1) the penalty is clearly stated in the tariff;

(2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and

(3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

§24.103. Contents of Petition Seeking Review of Rates Pursuant to the Texas Water Code, §13.043(b).

(a) Petitions for review of rate actions filed pursuant to the TWC, §13.043(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;

(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;

(3) the effective date of the decision being appealed;

(4) the basis of the request for review of rates; and

(5) any other information the commission may require.

(b) A petition must be received from a total of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal, whichever is less.

(c) A filing fee is not required for appeals or complaints filed under the TWC, §13.043(b).

§24.105. Refunds During Pendency of Appeal.

A utility which is appealing the action of the governing body of a municipality under the TWC, §13.043, shall not be required to make refunds of any over-collections during the pendency of the appeal.

§24.107. Seeking Review of Rates for Sales of Water Under the Texas Water Code §12.013.

(a) Ratepayers seeking commission action under TWC §12.013 should include in a written petition to the commission, the following information:

(1) the petitioner's name;

(2) the name of the water supplier from which water supply service is received or sought;

(3) the specific section of the code under which petitioner seeks relief, with 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 commission action under TWC §12.013 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 supply service is rendered;

(3) the specific section of the code under which petitioner seeks relief, with 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.

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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Adriana Gonzales
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SUBCHAPTER E. RECORDS AND REPORTS

16 TAC §§24.125, 24.127, 24.129, 24.131, 24.133, 24.135

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002

(West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.125. General Reports.

(a) Who shall file. The recordkeeping, reporting, and filing requirements listed in this section shall apply only to water and sewer utilities, unless otherwise noted in this subchapter.

(b) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.

(c) Due dates of reports. All reports must be received by the commission on or before the dates specified.

(d) Information omitted from reports. The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(e) Special and additional reports. Each utility shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(f) Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.

(g) Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

§24.127. Financial Records and Reports--Uniform System of Accounts.

Every public utility, except a utility operated by an affected county, shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

(1) System of accounts. For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(A) Class A Utility, as defined by §24.3(15) of this title (relating to Definitions of Terms); the uniform system of accounts as adopted and amended by the (NARUC) for a utility classified as a NARUC Class A utility.

(B) Class B Utility, as defined by §24.3(16) of this title; the uniform system of accounts as adopted and amended by NARUC for a utility classified as a NARUC Class B utility.

(C) Class C Utility, as defined by §24.3(17) of this title; the uniform system of accounts as adopted and amended by for a utility classified as a NARUC Class C utility.

(2) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

§24.129. Water and Sewer Utilities Annual Reports.

(a) Each utility, except a utility operated by an affected county, shall file a service, financial, and normalized earnings report by June 1 of each year.

(b) Contents of report. The annual report shall disclose the information required on the forms approved by the commission and may include any additional information required by the commission.

(c) A Class C utility's normalized earnings shall be equal to its actual earnings during the reporting period for the purposes of compliance with TWC §13.136.

§24.131. Maintenance and Location of Records.

Unless otherwise permitted by the commission, all records required by these sections or necessary for the administration thereof shall be kept within the State of Texas at a central location or at the main business office located in the immediate area served. These records shall be available for examination by the commission or its authorized representative between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, except holidays. The commission may consider alternate hours of inspection if the utility provides a written request 72 hours in advance of any scheduled inspection.

§24.133. Management Audits.

The commission may inquire into the management and affairs of all utilities and the affiliated interests of those utilities in order to keep itself informed as to the manner and method in which they are conducted and may obtain all information to enable it to perform management audits. The utility and, if applicable, the affiliated interest shall report to the commission on the status of the implementation of the recommendations of the audit and shall file subsequent reports at the times the commission considers appropriate.

§24.135. 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 the TWC, §13.002, or a district as defined in the TWC, §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, as required by TWC, §5.701(n), and remit such fee to the TCEQ.

(c) A utility service provider is prohibited from collecting a regulatory assessment from the state or a state agency or institution.

(d) 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.

(e) The utility service provider shall be responsible for keeping proper records of the annual charges and assessment collections for retail water and sewer service and provide such records to the commission upon request.

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

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SUBCHAPTER F. CUSTOMER SERVICE AND PROTECTION

16 TAC §§24.151, 24.153, 24.155, 24.157, 24.159, 24.161, 24.163, 24.165, 24.167, 24.169, 24.171

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.151. Applicability.

Unless otherwise noted, this subchapter is applicable only to "water and sewer utilities" as defined under Subchapter A of this chapter (relating to General Provisions) and includes affected counties.

§24.153. Customer Relations.

(a) Information to customers.

(1) Upon receipt of a request for service or service transfer, the utility shall fully inform the service applicant or customer of the cost of initiating or transferring service. The utility shall clearly inform the service applicant which service initiation costs will be borne by the utility and which costs are to be paid by the service applicant. The utility shall inform the service applicant if any cost information is estimated. Also see §24.161 of this title (relating to Response to Requests for Service by a Retail Public Utility Within Its Certificated Area).

(2) The utility shall notify each service applicant or customer who is required to have a customer service inspection performed. This notification must be in writing and include the applicant's or customer's right to get a second customer service inspection performed by a qualified inspector at their expense and their right to use the least expensive backflow prevention assembly acceptable under 30 TAC §290.44(h) (relating to Water Distribution) if such is required. The utility shall ensure that the customer or service applicant receives a copy of the completed and signed customer service inspection form and information related to thermal expansion problems that may be created if a backflow prevention assembly or device is installed.

(3) Upon request, the utility shall provide the customer or service applicant with a free copy of the applicable rate schedule from its approved tariff. A complete copy of the utility's approved tariff must be available at its local office for review by a customer or service applicant upon request.

(4) Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) must be labeled to indicate the size, design capacity, and any pertinent information that will accurately describe the utility's facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and must be available for commission inspection during normal working hours.

(5) Each utility shall maintain a current copy of the commission's substantive rules of this chapter at each office location and make them available for customer inspection during normal working hours.

(6) Each water utility shall maintain a current copy of 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems), at each office location and make them available for customer inspection during normal working hours.

(b) Customer complaints. Customer complaints are also addressed in §24.155 of this title (relating to Resolution of Disputes).

(1) Upon receipt of a complaint from a customer or service applicant, either in person, by letter or by telephone, the utility shall promptly conduct an investigation and report its finding(s) to the complainant.

(2) In the event the complainant is dissatisfied with the utility's report, the utility shall advise the complainant of recourse through the Public Utility Commission of Texas complaint process. The commission encourages all complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(3) Each utility shall make an initial response to the commission within 15 days of receipt of a complaint from the commission on behalf of a customer or service applicant. The commission may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission may require continuation or restoration of service.

(4) The utility shall keep a record of all complaints for a period of two years following the final settlement of each complaint. The record of complaint must include the name and address of the complainant, the date the complaint was received by the utility, a description of the nature of the complaint, and the adjustment or disposition of the complaint.

(c) Telephone number. For each of the systems it operates, the utility shall maintain and note on the customer's monthly bill either a local or toll free telephone number (or numbers) to which a customer can direct questions about their utility service.

(d) Local office.

(1) Unless otherwise authorized by the commission in response to a written request, each utility shall have an office in the county or immediate area (within 20 miles) of a portion of its utility service area in which it keeps all books, records, tariffs, and memoranda required by the commission.

(2) Unless otherwise authorized by the commission in response to a written request, each utility shall make available and notify customers of a business location where applications for service can be submitted and payments can be made to prevent disconnection of service or to restore service after disconnection for nonpayment, nonuse, or other reasons specified in §24.167 of this title (relating to Discontinuance of Service). The business location must be located:

(A) in each county where utility service is provided; or

(B) not more than 20 miles from any residential customer if there is no location to receive payments in that county.

(3) Upon request by the utility, the requirement for a local office may be waived by the commission if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers. Unless otherwise authorized by the commission in response to a written request, such utility shall make available and notify customers of a location within 20 miles of each of its

utility service facilities where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §24.167 of this title.

§24.155. Resolution of Disputes.

(a) Any customer or service applicant requesting the opportunity to dispute any action or determination of a utility under the utility's customer service rules shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer's request, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. The commission may require continuation or restoration of service pending resolution of a complaint. If the customer will not allow an inspection or chooses not to participate in such review or not to make arrangements for such review to take place within five working days after requesting it, the utility may disconnect service for the reasons listed in §24.167 of this title (relating to Discontinuance of Service), provided notice has been given in accordance with that section.

(b) In regards to a customer complaint arising out of a charge made by a public utility, if the commission finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the commission, the commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 working days of receiving the order is a violation for which the commission may impose an administrative penalty under TWC, §13.4151.

§24.157. Refusal of Service.

(a) Grounds for refusal to serve. A utility may decline to serve a service applicant for the following reasons:

(1) the service applicant is not in compliance with state or municipal regulations applicable to the type of service requested;

(2) the service applicant is not in compliance with the rules and regulations of the utility governing the type of service requested which are in its approved tariff on file with the commission;

(3) the service applicant is indebted to any utility for the same type of service as that requested. However, in the event the indebtedness of the service applicant is in dispute, the service applicant shall be served upon complying with the deposit requirements in §24.159 of this title (relating to the Service Applicant and Customer Deposit) and upon a demonstration that the service applicant has complied with all of the provisions of §24.165(l) of this title (relating to Billing);

(4) the service applicant's primary point of use is outside the certificated area;

(5) standby fees authorized under §24.165(p) of this title have not been paid for the specific property or lot on which service is being requested; or

(6) the utility is prohibited from providing service under Vernon's Texas Civil Statutes, Local Government Code, §212.012 or §232.029.

(b) Service Applicant's recourse. In the event the utility refuses to serve a service applicant under the provisions of these sections, the utility shall inform the service applicant in writing of the basis of its refusal and that the service applicant may file a complaint with the commission thereon.

(c) Insufficient grounds for refusal to serve. The following shall not constitute sufficient cause for refusal of service to a present customer or service applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules;

(3) failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;

(4) failure to pay the bill of another customer at the same address except where a change of customer identity is made to avoid or evade payment of a utility bill;

(5) failure to pay for the restoration of a tap removed by the utility at its option or removed as the result of tampering or delinquency in payment by a previous customer;

(6) the service applicant or customer chooses to use a type of backflow prevention assembly approved under 30 TAC §290.44(h) (relating to Water Distribution) even if the assembly is not the one preferred by the utility; or

(7) failure to comply with regulations or rules for anything other than the type of utility service specifically requested including failure to comply with septic tank regulations or sewer hook-up requirements.

§24.159. Service Applicant and Customer Deposit.

(a) Deposit on Tariff. Deposits may only be charged if listed on the utility's approved tariff.

(1) Residential service applicants. If a residential service applicant does not establish credit to the satisfaction of the utility, the residential service applicant may be required to pay a deposit that does not exceed $50 for water service and $50 for sewer service.

(2) Commercial and Nonresidential service applicants. If a commercial or nonresidential service applicant does not establish credit to the satisfaction of the utility, the service applicant may be required to make a deposit. The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings.

(3) Commercial and Nonresidential Customers. If actual monthly billings of a commercial or nonresidential customer are more than twice the amount of the estimated billings at the time service was established, a new deposit amount may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.

(b) Customers not disconnected. Current customers who have not been disconnected for nonpayment or other similar reasons in §24.167 of this title (relating to Discontinuance of Service) shall not be required to pay a deposit.

(c) Applicants 65 years of age or older. No deposit may be required of a residential service applicant who is 65 years of age or older if the applicant does not have a delinquent account balance with the utility or another water or sewer utility.

(d) Interest on deposits. Each utility shall pay a minimum interest on all customer deposits at an annual rate at least equal to a rate set each calendar year by the Public Utility Commission of Texas in accordance with the provisions of Texas Civil Statutes, Article 1440a. Payment of the interest to the customer shall be made annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account. Inquiries about the appropriate interest rate to be paid each year a deposit is held may be directed to the commission.

(e) Landlords/tenants. In cases of landlord/tenant relationships, the utility may require both parties to sign an agreement specifying which party is responsible for bills and deposits. This agreement may be included as a provision of the utility's approved service application form. The utility shall not require the landlord to guarantee the tenant's customer deposit or monthly service bill as a condition of service. The utility may require the landlord to guarantee the payment of service extension fees under the utility's approved tariff if these facilities will remain in public service after the tenant vacates the leased premises. If the landlord signs a guarantee of payment for deposits or monthly service bills, the guarantee shall remain in full force and effect until the guarantee is withdrawn in writing and copies are provided to both the utility and the tenant.

(f) Reestablishment of credit or deposit. Every service applicant who has previously been a customer of the utility and whose service has been discontinued for nonpayment of bills, meter tampering, bypassing of meter or failure to comply with applicable state and municipal regulations or regulations of the utility shall be required, before service is resumed, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and may be required to pay a deposit if the utility does not currently have a deposit from the customer. The burden shall be on the utility to prove the amount of utility service received but not paid for and the reasonableness of any charges for such unpaid service, as well as all other elements of any bill required to be paid as a condition of service restoration.

(g) Records of deposits.

(1) The utility shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit;

(C) each transaction concerning the deposit; and

(D) the amount of interest earned on customer deposit funds.

(2) The utility shall issue a receipt of deposit to each service applicant or customer from whom a deposit is received.

(3) A record of each unclaimed deposit shall be maintained for at least seven years, during which time the utility shall make a reasonable effort to return the deposit or may transfer the unclaimed deposit to the Texas Comptroller of Public Accounts. If not already transferred, after seven years, unclaimed deposits shall be transferred to the Texas Comptroller of Public Accounts.

(h) Refund of deposit.

(1) If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the service applicant's or customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. The utility may refund deposits plus accumulated interest at any time prior to termination of utility service. The utility's policy for refunds to current customers must be consistent and nondiscriminatory.

(2) When a residential customer has paid bills for service for 18 consecutive billings without being delinquent, the utility shall promptly refund the deposit with interest to the customer either by payment or credit to the customer's bill. Deposits from customers who do not meet this criteria may be retained until service is terminated.

(i) Transfer of service. A transfer of service from one service location to another within the service area of the utility shall not be deemed a disconnection within the meaning of this section, and no additional deposit may be demanded unless permitted by this subchapter.

§24.161. Response to Requests for Service by a Retail Public Utility Within Its Certificated Area.

(a) Except as provided for in subsection (e) of this section, every retail public utility shall serve each qualified service applicant within its certificated area as soon as is practical after receiving a completed application. A qualified service applicant is an applicant who has met all of the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service including the delivery to the retail public utility of any service connection inspection certificates required by law.

(1) Where a new service tap is required, the retail public utility may require that the property owner make the request for the tap to be installed.

(2) Upon request for service by a service applicant, the retail public utility shall make available and accept a completed written application for service.

(3) Except for good cause, at a location where service has previously been provided the utility must reconnect service within one working day after the applicant has submitted a completed application for service and met any other requirements in the utility's approved tariff.

(4) A request for service that requires a tap but does not require line extensions, construction, or new facilities shall be filled within five working days after a completed service application has been accepted.

(5) If construction is required to fill the order and if it cannot be completed within 30 days, the retail public utility shall provide a written explanation of the construction required and an expected date of service.

(b) Except for good cause shown, the failure to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from a qualified applicant may constitute refusal to serve, and may result in the assessment of administrative penalties or revocation of the certificate of convenience and necessity or the granting of a certificate to another retail public utility to serve the applicant.

(c) The cost of extension and any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be provided to the customer in writing upon assessment of the costs of necessary line work, but before construction begins. Also see §24.153 (a)(1) of this title (relating to Customer Relations).

(d) Easements.

(1) Where recorded public utility easements on the service applicant's property do not exist or public road right-of-way easements are not available to access the property of a service applicant, the public utility may require the service applicant or land owner to grant a permanent recorded public utility easement dedicated to the public utility which will provide a reasonable right of access and use to allow the public utility to construct, install, maintain, inspect and test water and/or sewer facilities necessary to serve that applicant.

(2) As a condition of service to a new subdivision, public utilities may require developers to provide permanent recorded public utility easements to and throughout the subdivision sufficient to construct, install, maintain, inspect, and test water and/or sewer facilities necessary to serve the subdivision's anticipated service demands upon full occupancy.

(3) A district or water supply corporation may require an applicant for service to grant an easement as allowed under applicable law.

(e) Service Extensions by a Water Supply or Sewer Service Corporation or Special Utility District.

(1) A water supply or sewer service corporation or a special utility district organized under Chapter 65 of the code is not required to extend retail water or sewer utility service to a service applicant in a subdivision within its certificated area if it documents that:

(A) the developer of the subdivision has failed to comply with the subdivision service extension policy as set forth in the tariff of the corporation or the policies of the special utility district; and

(B) the service applicant purchased the property after the corporation or special utility district gave notice of its rules which are applicable to service to subdivisions in accordance with the notice requirements in this subsection.

(2) Publication of notice, in substantial compliance with the form notice in Appendix A, in a newspaper of general circulation in each county in which the corporation or special utility district is certificated for utility service of the requirement to comply with the subdivision service extension policy constitutes notice under this subsection. The notice must be published once a week for two consecutive weeks on a biennial basis and must contain information describing the subdivision service extension policy of the corporation or special utility district. The corporation or special utility district must be able to provide proof of publication through an affidavit of the publisher of the newspaper that specifies each county in which the newspaper is generally circulated:
Figure: 16 TAC §24.161(e)(2)

(3) As an alternative to publication of notice, a corporation or special utility district may demonstrate by any reasonable means that a developer has been notified of the requirement to comply with the subdivision service extension policy, including:

(A) an agreement executed by the developer;

(B) correspondence with the developer that sets forth the subdivision service extension policy; or

(C) any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.

(4) For purposes of this subsection:

(A) "Developer" means a person who subdivides land or requests more than two water or sewer service connections on a single contiguous tract of land.

(B) "Service applicant" means a person, other than a developer, who applies for water or sewer utility service.

§24.163. Service Connections.

(a) Water Service Connections.

(1) Tap Fees. The fees for initiation of service, where no service previously existed, shall be in accordance with the following:

(A) The fee charged by a utility for connecting a residential service applicant's premises to the system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and administrative costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.

(B) Whether listed on the utility's approved tariff or not, the tap fee charged for all service connections requiring meters larger than 3/4 inch shall be limited to the actual cost of materials, labor and administrative costs for making the individual service connection and road construction or impact fees charged by authorities with control of road use and a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.

(C) An additional fee may be charged to a residential service applicant, if stated on the approved tariff, for a tap expense not normally incurred; for example, a road bore for customers outside of subdivisions or residential areas.

(2) Installation and Service Connection.

(A) The utility shall furnish and install, for the purpose of connecting its distribution system to the service applicant's property, the service pipe from its main to the meter location on the service applicant's property. See also paragraph (3) of this subsection. For all new installations, a utility-owned cut-off valve shall be provided on the utility side of the meter. Utilities without customer meters shall provide and maintain a cut-off valve on the customer's property as near the property line as possible. This does not relieve the utility of the obligation to comply with §24.169 of this title (relating to Meters).

(B) The service applicant shall be responsible for furnishing and laying the necessary service line from the meter to the place of consumption and shall keep the service line in good repair. For new taps or for new service at a location with an existing tap, service applicants may be required to install a customer owned cut-off valve on the customer's side of the meter or connection. Customers who have damaged the utility's cut-off valve or curb stop through unauthorized use or tampering may be required to install a customer owned cut-off valve on the customer's side of the meter or connection within a reasonable time frame of not less than 30 days if currently connected or prior to restoration of service if the customer has been lawfully disconnected under these rules. The customer's responsibility shall begin at the discharge side of the meter or utility's cut-off valve if there are no meters. If the utility's meter or cut-off valve is not on the customer's property, the customer's responsibility will begin at the property line.

(3) Location of meters. Meters shall be located on the customer's property, readily accessible for maintenance and reading and, so far as practicable, the meter shall be at a location mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from damage.

(4) Relocation and conversion of meters. If an existing meter is moved to a location designated by the customer for the customer's convenience, the utility may not be responsible except for negligence. The customer may be charged the actual cost of relocating the meter. If the customer requests that an existing meter be replaced with a meter of another size or capacity, the customer may be charged the actual cost of converting the meter including enlarging the line from the main to the meter if necessary.

(b) Sewer Service Connections.

(1) Tap Fees. The fees for initiation of sewer service, where no service previously existed, shall be in accordance with the following:

(A) The fee charged by a utility for connecting a residential service applicant's premises to the sewer system shall be as stated on the approved tariff. In determining the reasonableness of

a tap fee, the commission will consider the actual costs of materials, labor, and administrative costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.

(B) The fee charged for all commercial or nonstandard service connections shall be set at the actual cost of materials, labor and administrative costs for making the service connection and road construction or impact fees charged by authorities with control of road use and may include a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.

(C) A fee in addition to the standard tap fee may be charged for a new residential service connection which requires expenses not normally incurred if clearly identified on the approved tariff; for example, a road bore for service applicants outside of subdivisions or residential areas.

(D) Tap fees for sewer systems designed to receive effluent from a receiving tank located on the customer's property, whether fed by gravity or pressure into the utility's sewer main, may include charges to install a receiving tank and appurtenances on the customer's property and service line from the tank to the utility's main which meets the minimum standards set by the utility and authorized by the commission. The tank may include grinder pumps, etc. to pump the effluent into the utility's main. Ownership of and maintenance responsibilities for the receiving tank and appurtenances shall be specified in the utility's approved tariff.

(2) Installation and Service Connections.

(A) The utility shall furnish and install, for the purpose of connecting its collection system to the service applicant's service line, the service pipe from its main to a point on the customer's property.

(B) The customer shall be responsible for furnishing and laying the necessary customer service line from the utility's line to the residence.

(3) Maintenance by Customer.

(A) The customer service line and appurtenances installed by the customer shall be constructed in accordance with the laws and regulations of the State of Texas governing plumbing practices which must be at least as stringent and comprehensive as one of the following nationally recognized codes: the Southern Standard Plumbing Code, the Uniform Plumbing Code, and/or the National Standard Plumbing Code, or other standards as prescribed by the commission.

(B) It shall be the customer's responsibility to maintain the customer service line and any appurtenances which are the customer's responsibility in good operating condition, such as, clear of obstruction, defects, leaks or blockage. If the utility can provide evidence of excessive infiltration or inflow into the customer's service line or failure to provide proper pretreatment, the utility may, with the written approval of the commission, require that the customer repair the line or eliminate the infiltration or inflow or take such actions necessary to correct the problem. If the customer fails to correct the problem within a reasonable time, the utility may disconnect the service after notice as required under §24.167 of this title (relating to Discontinuance of Service). Less than ten days notice may be given if authorized by the commission.

(C) If the customer retains ownership of receiving tanks and appurtenances located on the customer's property under the utility's tariff, routine maintenance and repairs are the customer's responsibility. The utility may require in its approved tariff that parts and equipment meet the minimum standards set by the utility to ensure proper and efficient operation of the sewer system but cannot require that the customer purchase parts or repair service from the utility.

(c) Line extension and construction charges. Each utility shall file its extension policy with the commission as part of its tariff. The policy shall be consistent and nondiscriminatory. No contribution in aid of construction may be required of any service applicant except as provided for in the approved extension policy.

(1) Contributions in aid of construction shall not be required of individual residential service applicants for production, storage, treatment, or transmission facilities unless that residential customer places unique, non-standard service demands upon the system, in which case, the customer may be charged the additional cost of extending service to and throughout his property, including the cost of all necessary collection or transmission facilities necessary to meet the service demands anticipated to be created by that property.

(2) Developers may be required to provide contributions in aid of construction in amounts sufficient to reimburse the utility for:

(A) existing uncommitted facilities at their original cost if the utility has not previously been reimbursed. A utility shall not be reimbursed for facilities in excess of the amount the utility paid for the facilities. A utility is not required to allocate existing uncommitted facilities to a developer for projected development beyond a reasonable planning period; or

(B) additional facilities compliant with the commission's minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water or the commission's minimum design criteria for wastewater collection and treatment facilities and to provide for reasonable local demand requirements. Income tax liabilities which may be incurred due to collection of contributions in aid of construction may be included in extension charges to developers. Additional tax liabilities due to collection of the original tax liability may not be collected unless they can be supported and are specifically noted in the approved extension policy.

(3) For purposes of this subsection, a developer is one who subdivides or requests more than two water service connections or sewer service connections on a single contiguous tract of land.

(d) Cost utilities and service applicants shall bear.

(1) Within its certificated area, a utility shall be required to bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential service applicant within a platted subdivision unless the utility can document:

(A) that the developer of the subdivision refused to provide facilities compatible with the utility's facilities in accordance with the utility's approved extension policy after receiving a written request from the utility; or

(B) that the developer of the subdivision defaulted on the terms and conditions of a written agreement or contract existing between the utility and the developer regarding payment for services, extensions, or other requirements; or in the event the developer declared bankruptcy and was therefore unable to meet obligations; and

(C) that the residential service applicant purchased the property from the developer after the developer was notified of the need to provide facilities to the utility.

(2) A residential service applicant may be charged the remaining costs of extending service to his property; provided, however, that the residential service applicant may only be required to pay the cost equivalent to the cost of extending the nearest water main or waste-

water collection line, whether or not that line has adequate capacity to serve that residential service applicant. The following criteria shall be considered to determine the residential service applicant's cost for extending service:

(A) The residential service applicant shall not be required to pay for costs of main extensions greater than two inches in diameter for water distribution and pressure wastewater collection lines and six inches in diameter for gravity wastewater lines.

(B) Exceptions may be granted by the commission if:

(i) adequate service cannot be provided to the applicant using the maximum line sizes listed due to distance or elevation, in which case, it shall be the utility's burden to justify that a larger diameter pipe is required for adequate service;

(ii) larger minimum line sizes are required under subdivision platting requirements or building codes of municipalities within whose corporate limits or extraterritorial jurisdiction the point of use is located; or

(iii) the residential service applicant is located outside the CCN service area.

(C) If an exception is granted, the utility must establish a proportional cost plan for the specific extension or a rebate plan which may be limited to seven years to return the portion of the applicant's costs for oversizing as new customers are added to ensure that future applicants for service on the line pay at least as much as the initial service applicant.

(3) The utility shall bear the cost of any oversizing of water distribution lines or wastewater collection lines necessary to serve other potential service applicants or customers in the immediate area or for fire flow requirements unless an exception is granted under paragraph (2)(B) of this subsection.

(4) For purposes of determining the costs that service applicants shall pay, commercial customers with service demands greater than residential customer demands in the certificated area, industrial, and wholesale customers may be treated as developers. A service applicant requesting a one inch meter for a lawn sprinkler system to service a residential lot is not considered nonstandard service.

(e) Other Fees for Service Applicants. Except for an affected county, utilities shall not charge membership fees or application fees.

§24.165. Billing.

(a) Authorized rates. Bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b) Due date.

(1) The due date of the bill for utility service may not be less than 16 days after issuance unless the customer is a state agency. If the customer is a state agency, the due date for the bill may not be less than 30 days after issuance unless otherwise agreed to by the state agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes is the next work day after the due date.

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §24.153(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either $5.00 or 10% for all customers may be charged for delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §24.167 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that were not delinquent.

(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge that may not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) The customer's bill must include the following information, if applicable, and must be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate class or code;

(D) the total amount due for water service;

(E) the amount deducted as a credit required by a commission order;

(F) the amount due as a surcharge;

(G) the total amount due on or before the due date of the bill;

(H) the due date of the bill;

(I) the date by which customers must pay the bill in order to avoid addition of a penalty;

(J) the total amount due as penalty for nonpayment within a designated period;

(K) a distinct marking to identify an estimated bill;

(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(M) the total amount due for sewer service;

(N) the gallonage used in determining sewer usage; and

(O) the local telephone number or toll free number where the utility can be reached.

(3) Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the Texas Water Code or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility that serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates that will accurately reflect the cost of service to each class of customer.

(g) Consolidated billing and collection contracts.

(1) This subsection applies to all retail public utilities.

(2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.

(3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

(B) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(5) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

(h) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment must be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that was underbilled. The backbilling may not exceed 12 months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §24.169 of this title (relating to Meters). If the underbilling is $25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(i) Estimated bills. When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.

(j) Prorated charges for partial-month bills. When a bill is issued for a period of less than one month, charges should be computed as follows.

(1) Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.

(2) Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(3) Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.

(k) Prorated charges due to utility service outages. In the event that utility service is interrupted for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(l) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility and a payment equal to the customer's average monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by §24.167 of this title.

(2) Notwithstanding any other section of this chapter, the customer may not be required to pay the disputed portion of a bill that exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage will be the average of the customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage will be estimated on the basis of usage levels of similar customers under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service may not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the com-

pletion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §24.167 of this title.

(m) Notification of alternative payment programs or payment assistance. Any time customers contact a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide information to the customers in English and in Spanish, if requested, of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.

(n) Adjusted bills. There is a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills must be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months. This subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or

(4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.

(o) Equipment damage charges. A utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes that the system cannot properly treat. The utility may charge for all actual costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the commission.

(p) Fees. Except for an affected county, utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.

(1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:

(A) under a contract and only in accordance with the terms of the contract;

(B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change application has been properly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission; or

(C) for purposes of this subsection, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.

(2) Except as provided in §24.167(h)(2) and §24.169(c) of this title other fees listed on a utility's approved tariff may be charged when appropriate. Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.

(q) Payment with cash. When a customer pays any portion of a bill with cash, the utility shall issue a written receipt for the payment.

(r) Voluntary contributions for certain emergency services.

(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:

(A) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(C) informing the customer that a contribution is voluntary;

(D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and

(E) describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(A) the utility's expenses in administering the contribution program; or

(B) 5.0% of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.

§24.167. Discontinuance of Service.

(a) Disconnection with notice.

(1) Notice requirements. Proper notice shall consist of a separate written statement which a utility must mail or hand deliver to a customer before service may be disconnected. The notice must be provided in English and Spanish if necessary to adequately inform the customer and must include the following information:

(A) the words "termination notice" or similar language approved by the commission written in a way to stand out from other information on the notice;

(B) the action required to avoid disconnection, such as paying past due service charges;

(C) the date by which the required action must be completed to avoid disconnection. This date must be at least ten days from the date the notice is provided unless a shorter time is authorized by the commission;

(D) the intended date of disconnection;

(E) the office hours, telephone number, and address of the utility's local office;

(F) the total past due charges;

(G) all reconnect fees that will be required to restore water or sewer service if service is disconnected.

(H) if notice is provided by a sewer service provider under subsection (e) of this section, the notice must also state:

(i) that failure to pay past due sewer charges will result in termination of water service; and

(ii) that water service will not be reconnected until all past due and currently due sewer service charges and the sewer reconnect fee are paid.

(2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:

(A) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.

(i) Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.

(ii) Payment at a utility's office or authorized payment agency is considered payment to the utility.

(iii) The utility is not obligated to accept payment of the bill when an employee is at the customer's location to disconnect service;

(B) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others;

(C) operation of non-standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(D) failure to comply with deposit or guarantee arrangements where required by §24.159 of this title (relating to Service Applicant and Customer Deposit);

(E) failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section; and

(F) failure to pay solid waste disposal fees collected under contract with a county or other public agency.

(b) Disconnection without notice. Utility service may be disconnected without prior notice for the following reasons:

(1) where a known and dangerous condition related to the type of service provided exists. Where reasonable, given the nature of the reason for disconnection, a written notice of the disconnection, explaining the reason service was disconnected, shall be posted at the entrance to the property, the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) where service is connected without authority by a person who has not made application for service;

(3) where service has been reconnected without authority following termination of service for nonpayment under subsection (a) of this section;

(4) or in instances of tampering with the utility's meter or equipment, bypassing the same, or other instances of diversion as defined in §24.169 of this title (relating to Meters).

(c) Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:

(1) failure to pay for utility service provided to a previous occupant of the premises;

(2) failure to pay for merchandise, or charges for non-utility service provided by the utility;

(3) failure to pay for a different type or class of utility service unless the fee for such service is included on the same bill or unless such disconnection is in accordance with subsection (e) of this section;

(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §24.169 of this title;

(6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control;

(7) failure to comply with regulations or rules regarding anything other than the type of service being provided including failure to comply with septic tank regulations or sewer hook-up requirements;

(8) refusal of a current customer to sign a service agreement; or,

(9) failure to pay standby fees.

(d) Disconnection due to utility abandonment. No public utility may abandon a customer or a certificated service area unless it has complied with the requirements of §24.247 of this title (relating to Requirement to Provide Continuous and Adequate Service) and obtained approval from the commission.

(e) Disconnection of water service due to nonpayment of sewer charges.

(1) Where sewer service is provided by one retail public utility and water service is provided by another retail public utility, the retail public utility that provides the water service shall disconnect water service to a customer who has not paid undisputed sewer charges if requested by the sewer service provider and if an agreement exists between the two retail public utilities regarding such disconnection or if an order has been issued by the commission specifying a process for such disconnections.

(A) Before water service may be terminated, proper notice of such termination must be given to the customer and the water service provider by the sewer service provider. Such notice must be in conformity with subsection (a) of this section.

(B) Water and sewer service shall be reconnected in accordance with subsection (h) of this section. The water service provider may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. The water service provider may require the customer to pay any water service charges which have been billed but remain unpaid prior to reconnection. The water utility may require the sewer utility to reimburse it for the cost of disconnecting the water service in an amount not to exceed $50. The sewer utility may charge the customer its approved reconnect fee for nonpayment in addition to any past due charges.

(C) If the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer charges, the commission may issue an order requiring disconnections under specified conditions.

(D) The commission will issue an order requiring termination of service by the retail public utility providing water service if either:

(i) the retail public utility providing sewer service has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service; or,

(ii) the commission finds that an order is necessary to effectuate the purposes of the Texas Water Code.

(2) A utility providing water service to customers who are provided sewer service by another retail public utility may enter into an agreement to provide billing services for the sewer service provider. In this instance, the customer may only be charged the tariffed reconnect fee for nonpayment of a bill on the water service provider's tariff.

(3) This section outlines the duties of a water service provider to an area served by a sewer service provider of certain political subdivisions.

(A) This section applies only to an area:

(i) that is located in a county that has a population of more than 1.3 million; and

(ii) in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity.

(B) For each person the water service provider serves in an area to which this section applies, the water service provider shall provide the municipality or district with any relevant customer information so that the municipality or district may bill users of the sewer service directly and verify the water consumption of users. Relevant customer information provided under this section includes the name, address, and telephone number of the customer of the water service provider, the monthly meter readings of the customer, monthly consumption information, including any billing adjustments, and certain meter information, such as brand, model, age, and location.

(C) The municipality or district shall reimburse the water service provider for its reasonable and actual incremental costs for providing services to the municipality or district under this section. Incremental costs are limited to only those costs that are in addition to the water service provider's costs in providing its services to its customers, and those costs must be consistent with the costs incurred by other water utility providers. Only if requested by the wastewater provider, the water service provider must provide the municipality or district with documentation certified by a certified public accountant of the reasonable and actual incremental costs for providing services to the municipality or district under this section.

(D) A municipality or conservation and reclamation district may provide written notice to a person to whom the municipality's or district's sewer service system provides service if the person has failed to pay for the service for more than 90 days. The notice must state the past due amount owed and the deadline by which the past due amount must be paid or the person will lose water service. The notice may be sent by First Class mail or hand-delivered to the location at which the sewer service is provided.

(E) The municipality or district may notify the water service provider of a person who fails to make timely payment after the person receives notice under subparagraph (D) of this paragraph. The notice must indicate the number of days the person has failed to pay for sewer service and the total amount past due. On receipt of the notice, the water service provider shall discontinue water service to the person.

(F) This subsection does not apply to a nonprofit water supply or sewer service corporation created under Texas Water Code, Chapter 67, or a district created under Texas Water Code, Chapter 65.

(f) Disconnection for ill customers. No utility may discontinue service to a delinquent residential customer when that customer establishes that some person residing at that residence will become seriously ill or more seriously ill if service is discontinued. To avoid disconnection under these circumstances, the customer must provide a written statement from a physician to the utility prior to the stated date of disconnection. Service may be disconnected in accordance with subsection (a) of this section if the next month's bill and the past due bill are not paid by the due date of the next month's bill, unless the customer enters into a deferred payment plan with the utility.

(g) Disconnection upon customer request. A utility shall disconnect service no later than the end of the next working day after receiving a written request from the customer.

(h) Service restoration.

(1) Utility personnel must be available during normal business hours to accept payment on the day service is disconnected and the day after service is disconnected, unless the disconnection is at the customer's request or due to the existence of a dangerous condition related to the type of service provided. Once the past due service charges and applicable reconnect fees are paid or other circumstances which resulted in disconnection are corrected, the utility must restore service within 36 hours.

(2) Reconnect Fees.

(A) A reconnect fee, or seasonal reconnect fee as appropriate, may be charged for restoring service if listed on the utility's approved tariff.

(B) A reconnect fee may not be charged where service was not disconnected, except in circumstances where a utility representative arrives at a customer's service location with the intent to disconnect service because of a delinquent bill, and the customer prevents the utility from disconnecting the service.

(C) Except as provided under §24.169(c) of this title when a customer prevents disconnection at the water meter or connecting point between the utility and customer sewer lines, a reconnect fee charged for restoring water or sewer service after disconnection for nonpayment of monthly charges shall not exceed $25 provided the cus-

tomer pays the delinquent charges and requests to have service restored within 45 days. If a request to have service reconnected is not made within 45 days of the date of disconnection, the utility may charge its approved reconnect fee or seasonal reconnect fee.

(D) A reconnect fee cannot be charged for reconnecting service after disconnection for failure to pay solid waste disposal fees collected under a contract with a county or other public agency.

§24.169. Meters.

(a) Meter requirements.

(1) Use of meter. All charges for water service shall be based on meter measurements, except where otherwise authorized in the utility's approved tariff.

(2) Installation by utility. Unless otherwise authorized by the commission, each utility shall provide, install, own and maintain all meters necessary for the measurement of water provided to its customers.

(3) Standard type. No utility shall furnish, set up, or put in use any meter which is not reliable and of a standard type which meets industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation or experimental purposes.

(4) One meter is required for each residential, commercial, or industrial service connection. An apartment building, condominium, manufactured housing community, or mobile home park may be considered by the utility to be a single commercial facility for the purpose of these sections. The commission may grant an exception to the individual meter requirement if the plumbing of an existing multiple use or multiple occupant building would prohibit the installation of individual meters at a reasonable cost or would result in unreasonable disruption of the customary use of the property.

(b) Meter readings.

(1) Meter unit indication. In general, each meter shall indicate clearly the gallons of water or other units of service for which charge is made to the customer.

(2) Reading of meters.

(A) Service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each month, but may be read at other than monthly intervals if authorized in the utility's approved tariff.

(B) The utility shall charge for volume usage at the lowest block charge on its approved tariff when the meter reading date varies by more than two days from the normal meter reading date.

(c) Access to meters and utility cutoff valves.

(1) At the customer's request, utility employees must present information identifying themselves as employees of the utility in order to establish the right of access.

(2) Utility employees shall be allowed access for the purpose of reading, testing, installing, maintaining and removing meters and using utility cutoff valves. Conditions that may hinder access include, but are not limited to, fences with locked gates, vehicles or objects placed on top of meters or meter boxes, and unrestrained animals.

(3) When access is hindered on an ongoing basis, utilities may, but are not required to, make alternative arrangements for obtaining meter readings as described in paragraphs (4) and (5) of this subsection. Alternative arrangements for obtaining meter readings shall be made in writing with a copy provided to the customer and a copy filed in the utility's records on that customer.

(4) If access to a meter is hindered and the customer agrees to read his own meter and provide readings to the utility, the utility may bill according to the customer's readings; provided the meter is read by the utility at regular intervals (not exceeding six months) and billing adjustments are made for any overcharges or undercharges.

(5) If access to a meter is hindered and the customer does not agree to read their own meter, the utility may bill according to estimated consumption; provided the meter is read by the utility at regular intervals (not exceeding three months) and billing adjustments are made for any overcharges or undercharges.

(6) If access to a meter is hindered and the customer will not arrange for access at regular intervals, the utility may relocate the meter to a more accessible location and may charge the customer for the actual cost of relocating the meter. Before relocating the meter, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of relocating the meter, an explanation of the condition hindering access and what the customer can do to correct that condition, and information on how to contact the utility. The notice shall give the customer a reasonable length of time to arrange for utility access so the customer may avoid incurring the relocation cost. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.

(7) If access to a meter, cutoff valve or sewer connection is hindered by the customer and the customer's service is subject to disconnection under §24.167 of this title (relating to Discontinuance of Service), the utility may disconnect service at the main and may charge the customer for the actual cost of disconnection and any subsequent reconnection. The utility shall document the condition preventing access by providing photographic evidence or a sworn affidavit. Before disconnecting service at the main, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of disconnecting service at the main and reconnecting service and shall give the customer at least 72 hours to correct the condition preventing access and to pay any delinquent charges due the utility before disconnection at the main. The customer may also be required to pay the tariffed reconnect fee for nonpayment in addition to delinquent charges even if service is not physically disconnected. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.

(d) Meter tests on request of customer.

(1) Upon the request of a customer, each utility shall make, without charge a test of the accuracy of the customer's meter. If the customer asks to observe the test, the test shall be conducted in the customer's presence or in the presence of the customer's authorized representative. The test shall be made during the utility's normal working hours at a time convenient to the customer. Whenever possible, the test shall be made on the customer's premises, but may, at the utility's discretion, be made at the utility's testing facility.

(2) Following the completion of any requested test, the utility shall promptly advise the customer of the date of the test, the result of the test, who made the test and the date the meter was removed if applicable.

(3) If the meter has been tested by the utility or a testing facility at the customer's request, and within a period of two years the customer requests a new test, the utility shall make the test, but if the meter is found to be within the accuracy standards established by the American Water Works Association, the utility may charge the customer a fee which reflects the cost to test the meter, but this charge shall in no event be more than $25 for a residential customer.

(e) Meter testing.

(1) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial. The test shall be conducted in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association or other procedures approved by the commission.

(2) The utility shall provide the necessary standard facilities, instruments, and other equipment for testing its meters in compliance with these sections. Any utility may be exempted from this requirement by the commission provided that satisfactory arrangements are made for testing its meters by another utility or testing facility equipped to test meters in compliance with these sections.

(3) Measuring devices for testing meters may consist of a calibrated tank or container for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory as may be approved by the commission. The commission can also authorize the use of a volumetric container for testing meters without a laboratory certification when it is in the best interest of the customer and utility to reduce the cost of testing. If a weight standard is used, the scales shall be tested and calibrated periodically by an approved laboratory and a record maintained of the results of the test.

(4) Standards used for meter testing shall be of a capacity sufficient to insure accurate determination of meter accuracy and shall be subject to the approval of the commission.

(5) A standard meter may be provided and used by a utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated at least once per year unless a longer period is approved by the commission to insure its accuracy within the limits required by these sections. A record of such tests shall be kept by the utility for at least three years following the tests.

(f) Meter test prior to installation. No meter shall be placed in service unless its accuracy has been established. If any meter shall have been removed from service, it must be properly tested and adjusted before being placed in service again. No meter shall be placed in service if its accuracy falls outside the limits as specified by the American Water Works Association.

(g) Bill adjustment due to meter error. If any meter is found to be outside of the accuracy standards established by the American Water Works Association, proper correction shall be made of previous readings for the period of six months immediately preceding the removal of such meter from service for the test, or from the time the meter was in service since last tested, but not exceeding six months, as the meter shall have been shown to be in error by such test, and adjusted bills shall be rendered. No refund is required from the utility except to the customer last served by the meter prior to the testing. If a meter is found not to register for any period, unless bypassed or tampered with, the utility shall make a charge for units used, but not metered, for a period not to exceed three months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.

(h) Meter tampering. For purposes of these sections, meter tampering, bypass, or diversion shall be defined as tampering with a water or sewer utility company's meter or equipment causing damage or unnecessary expense to the utility, bypassing the same, or other instances of diversion, such as physically disorienting the meter, objects attached to the meter to divert service or to bypass, insertion of objects into the meter, other electrical and mechanical means of tampering with, bypassing, or diverting utility service, removal or alteration of utility-owned equipment or locks, connection or reconnection of service without utility authorization, or connection into the service line of adjacent customers or of the utility. The burden of proof of meter tampering, bypass, or diversion is on the utility. Photographic evidence must be accompanied by a sworn affidavit by the utility when any action regarding meter tampering as provided for in these sections is initiated. A court finding of meter tampering may be used instead of photographic or other evidence, if applicable.

§24.171. Continuity of Service.

(a) Service interruptions.

(1) Every utility or water supply or sewer service corporation shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(b) Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

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. QUALITY OF SERVICE

16 TAC §§24.201, 24.203, 24.205, 24.207, 24.209

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.201. Applicability.

Except where otherwise noted, this chapter applies to retail public utilities as defined by §24.3 of this title (relating to Definitions of Terms)

which possess or are required to possess a Certificate of Convenience and Necessity.

§24.203. 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.

§24.205. Adequacy of Water Utility Service.

Sufficiency of service. Each retail public utility which provides water service shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

(1) The water system quantity and quality requirements of the TCEQ shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of the water supplied for household usage. Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.

(2) In cases of drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, to comply with a state agency or court order on conservation or other reasons identified in the utility's approved drought contingency plan required by 30 TAC §288.20 (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers), restrictions may be instituted to limit water usage in accordance with the utility's approved drought contingency plan. For utilities, these temporary restrictions must be in accordance with an approved drought contingency plan. Unless specifically authorized by TCEQ, retail public utilities may not use water use restrictions in lieu of providing facilities which meet the minimum capacity requirements of 30 TAC Chapter 290 (relating to Public Drinking Water), or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

(A) A utility must file a copy of its TCEQ-approved drought contingency plan with the utility's approved tariff. The utility may not implement mandatory water use restrictions without an approved drought contingency plan unless authorized by the TCEQ. If TCEQ provides such authorization, the utility must provide immediate notice to the commission.

(B) Temporary restrictions must be in accordance with the utility's approved drought contingency plan on file or specifically authorized by the TCEQ. The utility shall file a copy of any status report required to be filed with the TCEQ with the commission at the same time it is required to file the report with the TCEQ.

(C) The utility must provide written notice to each customer in accordance with the drought contingency plan prior to implementing the provisions of the plan. The utility must provide written notice to the commission prior to implementing the provisions of the plan.

(3) A retail public utility that possesses a certificate of public convenience and necessity that is required to file a planning report with the TCEQ under requirements in 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems) shall also file a copy of the planning report with the commission at the same time it is required to file the report with the TCEQ.

(A) If the TCEQ waives or limits the reporting requirements, the utility shall file with the commission within ten days a notice that the reporting requirements have been waived or limited, including a copy of any order or other authorization.

(B) A retail public utility shall file a copy of any updated or amended plan or report required to be filed under this section.

(C) Submission of this report shall not relieve the retail public utility from abiding by the requirements of other regulatory agencies as set forth in §24.203 of this title (relating to Requirements by Others).

(4) Each retail public utility which possesses or is required to possess a certificate of convenience and necessity shall furnish safe water which meets TCEQ's minimum quality criteria for drinking water.

(5) Every retail public utility shall maintain its facilities to protect them from contamination, ensure efficient operation, and promptly repair leaks.

§24.207. Adequacy of Sewer Service.

(a) Sufficiency of service. Each retail public utility shall plan, furnish, operate, and maintain collection, treatment, and disposal facilities to collect, treat and dispose of waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation. These facilities must be of sufficient size to meet TCEQ's minimum design criteria for wastewater facilities for all normal demands for service and provide a reasonable reserve for emergencies. Unless specifically authorized in a written service agreement, a retail public utility is not required to receive, treat and dispose of waste with high biological oxygen demand (BOD) or total suspended solids (TSS) characteristics that cannot be reasonably processed, or storm water, run-off water, food or food scraps not previously processed by a grinder or similar garbage disposal unit, grease or oils, except as incidental waste in the process or wash water used in or resulting from food preparation by sewer utility customers engaged in the preparation and/or processing of food for domestic consumption or sale to the public. Grease and oils from grease traps or other grease and/or oil storage containers shall not be placed in the wastewater system.

(b) Sufficiency of treatment. Each retail public utility shall maintain and operate treatment facilities of adequate size and properly equipped to treat sewage and discharge the effluent at the quality required by the laws and regulations of the State of Texas.

(c) Maintenance of facilities.

(1) The retail public utility shall maintain its collection system and appurtenances to minimize blockages.

(2) If the utility retains ownership of receiving tanks located on the customer's property or other facilities and appurtenances, it is the utility's responsibility and liability to perform routine maintenance and repair.

§24.209. Standards of Construction.

In determining standard practice, the commission will be guided by the provisions of the American Water Works Association, and such other codes and standards that are generally accepted by the industry, except as modified by this commission, or municipal regulations within their jurisdiction. Each system shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with

these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other retail public utilities insofar as practical.

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SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.225, 24.227, 24.229, 24.231, 24.233, 24.235, 24.237, 24.239, 24.241, 24.243, 24.245, 24.247, 24.249, 24.251, 24.253, 24.255, 24.257, 24.259

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.225. Certificate of Convenience and Necessity Required.

(a) Unless otherwise specified, a utility or a water supply or sewer service corporation may not in any way provide retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate of convenience and necessity (CCN). Except as otherwise provided by this subchapter, a retail public utility may not provide, make available, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully provided by another retail public utility without first obtaining a CCN that includes the area in which the consuming facility is located.

(b) A district may not provide services within the certificated service area of a retail public utility or within the boundaries of another district without the retail public utility's or district's consent, unless the district has a CCN to provide retail water or sewer utility service to that area.

(c) Except as otherwise provided by this subchapter, a retail public utility may not provide retail water or sewer utility service within the boundaries of a district that provides the same type of retail water or sewer utility service without the district's consent, unless the retail public utility has a CCN to provide retail water or sewer utility service to that area.

(d) A person that is not a retail public utility, a utility, or a water supply or sewer service corporation that is operating under provisions in accordance with TWC §13.242(c) may not construct facilities to provide retail water or sewer utility service to more than one service connection that is not on the property owned by the person and that is within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.

(e) A supplier of wholesale water or sewer service may not require a purchaser to obtain a CCN if the purchaser is not otherwise required by this chapter to obtain a CCN.

§24.227. Criteria for Granting or Amending a Certificate of Convenience and Necessity.

(a) In determining whether to grant or amend a certificate of convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For retail water utility service, the commission shall ensure that the applicant has:

(A) a TCEQ-approved public water system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC; and

(B) access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.

(2) For retail sewer utility service, the commission shall ensure that the applicant has:

(A) a TCEQ-approved system that is capable of meeting TCEQ design criteria for sewer treatment plants, TCEQ rules, and the TWC; and

(B) access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of paragraph (2)(A) of this subsection.

(b) When applying for a new CCN or a CCN amendment for an area that would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) for applications to obtain or amend a water CCN, a list of all retail public water and/or sewer utilities within one half mile from the outer boundary of the requested area;

(2) for applications to obtain or amend a sewer CCN, a list of all retail public sewer utilities within one half mile from the outer boundary of the requested area;

(3) copies of written requests seeking to obtain service from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection or evidence that it is not economically feasible to obtain service from the retail public utilities referenced in paragraph (1) or (2) of this subsection;

(4) copies of written responses from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection from which written requests for service were made or evidence that they failed to respond within 30 days of the date of the request;

(5) if a neighboring retail public utility has agreed to provide service to a requested area, then the following information must also be provided by the applicant:

(A) a description of the type of service that the neighboring retail public utility is willing to provide and comparison with service the applicant is proposing;

(B) an analysis of all necessary costs for constructing, operating, and maintaining the new facilities for at least the first five years of operations, including such items as taxes and insurance; and

(C) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.

(c) The commission may approve applications and grant or amend a CCN only after finding that granting or amending the CCN is necessary for the service, accommodation, convenience, or safety of the public. The commission may grant or amend the CCN as applied for, or refuse to grant it, or grant it for the construction of only a portion of the contemplated facilities or extension thereof, or for only the partial exercise of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a CCN, the commission shall also consider:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of granting or amending a CCN on the CCN recipient, on any landowner in the requested area, and on any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested area. These effects include but are not limited to regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the TCEQ and the commission, taking into consideration the current and projected density and land use of the requested area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the new CCN or a CCN amendment; and

(9) the effect on the land to be included in the requested area.

(e) The commission may require an applicant seeking to obtain a new CCN or a CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(f) Where applicable, in addition to the other factors in this chapter the commission shall consider the efforts of the applicant to extend retail water and/or sewer utility service to any economically distressed areas located within the applicant's certificated service area. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001.

(g) For two or more retail public utilities that apply for a CCN to provide retail water and/or sewer utility service to an unserved area located in an economically distressed area as defined in TWC §15.001, the commission shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties cannot agree among themselves regarding who will provide service. The assessment shall be conducted considering the following information:

(1) all criteria from subsections (a) - (f) of this section;

(2) source-water adequacy;

(3) infrastructure adequacy;

(4) technical knowledge of the applicant;

(5) ownership accountability;

(6) staffing and organization;

(7) revenue sufficiency;

(8) creditworthiness;

(9) fiscal management and controls;

(10) compliance history; and

(11) planning reports or studies by the applicant to serve the proposed area.

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the requested area may elect to exclude some or all of the landowner's property from the requested area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an application for a CCN or for a CCN amendment. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the requested area shall be modified to remove the electing landowner's property. An applicant that has land removed from its requested area because of a landowner's election under this subsection may not be required to provide retail water or sewer utility service to the removed land for any reason, including a violation of law or commission rules.

(1) The landowner's request to opt out of the requested area shall be filed with the commission and shall include the following information:

(A) the commission docket number and CCN number if applicable;

(B) the total acreage of the tract of land subject to the landowner's opt-out request; and

(C) a metes and bounds survey for the tract of land subject to the landowner's opt-out request, that is sealed or embossed by either a licensed state land surveyor or registered professional land surveyor.

(2) The applicant shall file the following mapping information to address each landowner's opt-out request:

(A) a detailed map identifying the revised requested area after removing the tract of land subject to each landowner's opt-out request. The map shall also identify the outer boundary of each tract of land subject to each landowner's opt-out request, in relation to the revised requested area. The map shall identify the tract of land and the requested area in reference to verifiable man-made and/or natural landmarks such as roads, rivers, and railroads;

(B) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters) for the revised requested area after removing each tract of land subject to any landowner's opt-out request. The digital mapping data shall include a single, continuous polygon record; and

(C) the total acreage for the revised requested area after removing each tract of land subject to the landowner's opt-out requests. The total acreage for the revised requested area must correspond to the total acreage included with the digital mapping data.

(i) If the requested area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a retail public utility owned by the municipality is the applicant, a landowner is not entitled to make an election under subsection (h) of this section but is entitled to file a request to intervene in order to contest the inclusion of the landowner's property in the requested area at a hearing regarding the application.

§24.229. Certificate of Convenience and Necessity Not Required.

(a) Extension of Service.

(1) Except for a utility or water supply or sewer service corporation that possesses a facilities-only certificate of convenience and necessity (CCN), a retail public utility is not required to obtain a CCN for:

(A) an extension into territory contiguous to that already served by the retail public utility if:

(i) the point of ultimate use is within one quarter mile of the outer boundary of its existing certificated service area;

(ii) the area is not receiving similar service from another retail public utility; and

(iii) the area is not located inside another retail public utility's certificated service area; or

(B) an extension within or to territory already served by it or to be served by it under a CCN.

(2) Whenever an extension is made under 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 service area clearly showing the extension, accompanied by a written explanation of the extension.

(b) Construction of Facilities. A CCN is not required for the construction or upgrading of distribution facilities within the retail public utility's certificated service area, or for the purchase or condemnation of real property for use as facility sites or rights-of-way. Prior acquisition of facility sites or rights-of-way, and prior construction or upgrading of distribution facilities, does not entitle a retail public utility to be granted a CCN or CCN amendment without a showing that the proposed CCN or CCN amendment is necessary for the service, accommodation, convenience, or safety of the public.

(c) Single Certification Under TWC §13.255. A municipality that has given notice under TWC §13.255 that it intends to provide retail water or sewer utility service to an area or to customers not currently being served is not required to obtain a CCN prior to commencing service in the area if the municipality:

(1) provides a copy of the notice required in TWC §13.255 to the retail public utility;

(2) files a copy of the notice with the commission; and

(3) files an application for single certification as required by TWC §13.255 and §24.259 of this title (relating to Single Certification in Incorporated or Annexed Areas).

(d) Municipal Systems in Unserved Area.

(1) This subsection applies only to a home-rule municipality that is:

(A) located in a county with a population of more than 1.75 million; and

(B) adjacent to a county with a population of more than 1 million and has within its boundaries a part of a district.

(2) If a district does not establish a fire department under TWC §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.

(3) For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC §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 TWC §13.255(b).

(e) Water Utility or Water Supply Corporation With Less Than 15 Potential Connections.

(1) A water utility or water supply corporation is exempt from the requirement to possess a CCN to provide retail water utility service if it:

(A) has less than 15 potential service connections;

(B) is not owned by or affiliated with a retail public water utility, or any other entity, that provides potable water service;

(C) is not located within the certificated service area of another retail public water utility; and

(D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.

(2) A water utility or water supply corporation with less than 15 potential connections currently operating under a CCN may request cancellation of the CCN at any time.

(3) The commission may cancel the current CCN upon written request by the exempt utility or water supply corporation.

(4) An exempt utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the commission which shall not be more stringent than those in §§24.151 - 24.171 of this title (relating to Customer Service and Protection).

(5) The exempt utility shall provide a copy of its tariff to each future customer at the time service is requested and upon request to each current customer.

(6) An applicant requesting registration status as an exempt utility shall comply with the mapping documents as prescribed

in §24.257(a)(2) - (3) of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications).

(7) Exempt-Utility Tariff and Rate Change Requirements. An exempt utility operating under registration status as an exempt utility:

(A) must maintain a current copy of the exempt-utility's tariff with its current rates at its business location; and

(B) may change its rates without following the requirements in §24.27 of this title (relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871) if it provides each customer with written notice of the rate change prior to the effective date of the rate change. The written notice shall indicate 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 comments or requests to intervene may be filed with the commission at the following mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. If the commission receives written comments or requests to intervene from at least 50% of the customers of an exempt utility within 90 days after the effective date of the rate change, the commission shall review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments or requests to intervene from customers or the exempt utility, the commission shall establish the rates to be charged by the exempt utility. Those rates 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 intervenors. These rates may not be changed for 12 months after the proposed effective date without authorization by the commission. The exempt utility shall refund any rates collected in excess of the rates established by the commission in accordance with the time frames or other requirements established by the commission.

(C) The exempt utility or water supply corporation, Office of Public Utility Counsel, commission staff, or any affected customer may file a written motion for rehearing. The rates determined by the commission shall remain in effect while the commission considers the motion for rehearing.

(8) Unless authorized in writing by the commission, an exempt water utility or a water supply corporation operating under these requirements may not cease operations. An exempt water utility may not discontinue service to a customer with or without notice except in accordance with its commission approved exempt-utility tariff and an exempt water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.

(9) An exempt water 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 approved by the commission shall be subject to any and all enforcement remedies provided by this chapter and TWC chapter 13.

§24.231. Applicant.

(a) It is the responsibility of the owner of the utility, the utility's designated representative or authorized agent, the president of the board of directors or designated representative of the water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality to file an application for a certificate of convenience and necessity (CCN) with the commission to obtain or amend a CCN.

(b) The applicant shall have the continuing duty to submit information regarding any material change in the applicant's financial, managerial, or technical status that arises during the application review process.

§24.233. Contents of Certificate of Convenience and Necessity Applications.

(a) Application. To obtain or amend a certificate of convenience and necessity (CCN), a person, public water or sewer utility, water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality shall file an application for a new CCN or a CCN amendment. Applications must contain the following materials, unless otherwise specified in the application form:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) mapping documents as prescribed in §24.259 of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);

(3) information to demonstrate a need for service in the requested area, including:

(A) a copy of each written request for service received, if any; and

(B) a map showing the location of each request for service, if any;

(4) if applicable, a statement that the requested area overlaps with the corporate boundaries of a district, municipality, or other public authority, including:

(A) a list of the entities that overlap with the requested area; and

(B) evidence to show that the applicant has received the necessary approvals including any consents, franchises, permits, or licenses to provide retail water or sewer utility service in the requested area from the applicable municipality, district, or other public authority that:

(i) currently provides retail water or sewer utility service in the requested area;

(ii) is authorized to provide retail water or sewer service by enabling statute or order; or

(iii) has an ordinance in effect that allows it to provide retail water or sewer service in the requested area, if any.

(5) an explanation from the applicant demonstrating that issuance of a new CCN or a CCN amendment is necessary for the service, accommodation, convenience, or safety of the public;

(6) if the infrastructure is not already in place or if existing infrastructure needs repairs and improvements to provide continuous and adequate service to the requested area, a capital improvement plan, including a budget and an estimated timeline for construction of all facilities necessary to provide full service to the requested area, keyed to a map showing where such facilities will be located to provide service;

(7) a description of the sources of funding for all facilities that will be constructed to serve the requested area, if any;

(8) disclosure of all affiliated interests as defined by §24.3 of this title;

(9) to the extent known, a description of current and projected land uses, including densities;

(10) a current financial statement of the applicant;

(11) according to the tax roll of the central appraisal district for each county in which the requested area is located, a list of the owners of each tract of land that is:

(A) at least 25 acres; and

(B) wholly or partially located within the requested area;

(12) if dual certification is being requested, a copy of the executed agreement that allows for dual certification of the requested area. Where such an agreement is not practicable, a statement of why dual certification is in the public interest;

(13) if an amendment is being requested with the consent of the existing CCN holder, a copy of the executed agreement to amend the existing certificated service area;

(14) for an application for a new water CCN or a CCN amendment that will require the construction of a new public drinking water system or facilities to provide retail water utility service, a copy of:

(A) the approval letter for the plans and specifications issued by the TCEQ for the public drinking water system or facilities. Proof that the applicant has submitted plans and specifications for the proposed drinking water system is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new water CCN or a CCN amendment may be subject to dismissal without prejudice. Any approval letter for the proposed public drinking water system or facilities must be filed with the commission before the issuance of a new CCN or a CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in dismissal of the application without prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required by TCEQ rules;

(B) other information that indicates the applicant is in compliance with §24.205 of this title (relating to Adequacy of Water Utility Service) for the system; or

(C) a contract with a wholesale provider that meets the requirements in §24.205 of this title;

(15) for an application for a new sewer CCN or CCN amendment that will require the construction of a new sewer system or new facilities to provide retail sewer utility service, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for the additional facility has been filed with the TCEQ. Proof that the applicant has submitted an application for a wastewater permit is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new sewer CCN or CCN amendment may be subject to dismissal without prejudice. Any approval letter for the permit application must be filed with the commission before the issuance of a new CCN or a CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in the dismissal of the application without prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required by TCEQ rules.

(B) other information that indicates that the applicant is in compliance with §24.207 of this title (relating to Adequacy of Sewer Service) for the facility; or

(C) a contract with a wholesale provider that meets the requirements in §24.207 of this title; and

(16) any other item or information required by the commission.

(b) If the requested area overlaps the boundaries of a district, and the district does not intervene in the docket by the intervention deadline after notice of the application is given, the commission shall determine that the district is consenting to the applicant's request to provide service in the requested area.

(c) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) This subsection applies only to a municipality with a population of 500,000 or more.

(2) Except as provided by paragraphs (3) - (7) of this subsection, the commission may not grant to a retail public utility a CCN for a requested area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:

(A) does not have the ability to provide service; or

(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvement plan required by TWC §13.244(d)(3) or a subdivision plat, the commission may grant the new CCN or a CCN amendment without the consent of the municipality if:

(A) the commission makes the findings required by paragraph (3) of this subsection;

(B) the municipality has not entered into a binding commitment to serve the requested area before the 180th day after the date the formal request was made; and

(C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(i) comply with the municipality's service extension and development process; or

(ii) enter into a contract for retail water or sewer utility service with the municipality.

(5) If a municipality refuses to provide service in the requested area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(7) Paragraphs (4) - (6) of this subsection do not apply to Cameron, Hidalgo, or Willacy Counties, or to a county:

(A) with a population of more than 30,000 and less than 35,000 that borders the Red River;

(B) with a population of more than 100,000 and less than 200,000 that borders a county described by subparagraph (A) of this paragraph;

(C) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border;

(D) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio river; or

(E) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this paragraph.

(8) A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(9) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(d) Extension beyond extraterritorial jurisdiction.

(1) Except as provided by paragraph (2) of this subsection, if a municipality extends its extraterritorial jurisdiction to include an area in the certificated service area of a retail public utility, the retail public utility may continue and extend service in its certificated service area under the rights granted by its CCN and this chapter.

(2) The commission may not extend a municipality's certificated service area beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within the requested area in accordance with TWC §13.246(h). This subsection does not apply to a sale, transfer, merger, consolidation, acquisition, lease, or rental of a CCN as approved by the commission.

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Hidalgo, or Willacy Counties, or in a county:

(A) with a population of more than 30,000 and less than 35,000 that borders the Red River;

(B) with a population of more than 100,000 and less than 200,000 that borders a county described by subparagraph (A) of this paragraph;

(C) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(D) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio river.

(E) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this paragraph.

(4) To the extent of a conflict between this subsection and TWC §13.245, TWC §13.245 prevails.

(e) Area within municipality.

(1) If an area is within the boundaries of a municipality, any retail public utility holding or entitled to hold a CCN under this chapter to provide retail water and/or sewer utility service or operate facilities in that area may continue and extend service in its certificated service area, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by TWC §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the certificated service area of another retail public utility without first having obtained from the commission a CCN that includes the area to be served.

(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code §182.025.

(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

(A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.

(B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality, and the commission shall take such requested action upon notification of acquisition of the system.

§24.235. Notice Requirements for Certificate of Convenience and Necessity Applications.

(a) If an application to obtain or amend a certificate of convenience and necessity (CCN) is filed, the applicant will prepare the notice prescribed in the commission's application form, which will include the following:

(1) all information outlined in the Administrative Procedure Act, Texas Government Code, Chapter 2001;

(2) all information listed in the commission's instructions for completing a CCN application;

(3) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise

provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date."; and

(4) except for publication of notice, the notice must include a map showing the requested area.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will provide the notice to the applicant for publication and/or mailing.

(1) For applications for a new CCN or a CCN amendment, the applicant shall mail the notice to the following:

(A) cities, districts, and neighboring retail public utilities providing the same utility service whose corporate boundaries or certificated service area are located within two miles from the outer boundary of the requested area.

(B) the county judge of each county that is wholly or partially included in the requested area; and

(C) each groundwater conservation district that is wholly or partially included in the requested area.

(2) Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant shall mail notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area. Notice required under this subsection must be mailed by first class mail to the owner of the tract of land according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the CCN. Good faith efforts to comply with the requirements of this subsection shall be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

(A) TWC §13.248 or §13.255; or

(B) TWC Chapter 65.

(3) Utilities that are required to possess a CCN but that are currently providing service without a CCN must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date of the current rates, and any other information required in the application or notice form or by the commission.

(4) Within 30 days of the date of the notice, the applicant shall file in the docket an affidavit specifying every person and entity to whom notice was provided and the date that the notice was provided.

(c) The applicant shall publish the notice in a newspaper having general circulation in the county where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission. Proof of publication in the form of a publisher's affidavit shall be filed with the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) The commission may require the applicant to deliver notice to other affected persons or agencies.

(e) The recording in the county records required by this section must be completed not later than the 31st day after the date a CCN holder receives a final order from the commission that grants or amends a CCN and thus changes the CCN holder's certificated service area.

§24.237. Action on Applications.

(a) The commission may conduct a public hearing on any application.

(b) After proper notice, the commission may take action on an uncontested application at any time after the later of the expiration of the intervention period or for which all interventions are subsequently withdrawn.

(c) If a hearing is requested, the application will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

§24.239. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental

(a) Any water supply or sewer service corporation, or water and sewer utility, owned by an entity required by law to possess a certificate of convenience and necessity (CCN) shall, and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:

(1) the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or

(2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.

(b) The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days unless good cause is shown. Public notice may be waived by the commission for good cause shown.

(c) Unless notice is waived by the commission for good cause shown, proper notice shall be given to affected customers and to other affected parties as determined by the commission and on the form prescribed by the commission which shall include the following:

(1) the name and business address of the current utility holding the CCN (transferor) and the retail public utility or person which will acquire the facilities or CCN (transferee);

(2) a description of the requested area; and

(3) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date."

(d) The commission may waive notice under this subsection if the requested area does not include unserved area, or for good cause shown. If notice is not waived by the commission, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.

(e) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located.

(f) The commission may allow published notice in lieu of individual notice as required in this subsection.

(g) A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system (transferee) must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227(a) of this title (relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity).

(h) If the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water and/or sewer utility service is provided to both the requested area and any area already being served under the transferee's existing CCN. The commission shall set the amount of financial assurance. The form of the financial assurance shall be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this title does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(i) The commission shall, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental to determine whether the transaction will serve the public interest. If the commission decides to hold a hearing, or if the transferee fails either to file the application as required or to provide public notice, the transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

(j) Prior to the expiration of the 120-day period described in subsection (a) of this section, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. The commission may require a hearing if:

(1) the application filed with the commission or the public notice was improper;

(2) the transferee has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being served under the transferee's existing CCN;

(3) the transferee has a history of:

(A) noncompliance with the requirements of the TCEQ, the commission, or the Texas Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the transferee cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the requested area; or

(5) there are concerns that the transaction does not serve the public interest. It is in the public interest to investigate the following factors:

(A) whether the transferor or the transferee has failed to comply with any commission or TCEQ order. The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental if conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met;

(B) the adequacy of service currently provided to the requested area;

(C) the need for additional service in the requested area;

(D) the effect of approving the transaction on the transferee, the transferor, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area;

(E) the ability of the transferee to provide adequate service;

(F) the feasibility of obtaining service from an adjacent retail public utility;

(G) the financial stability of the transferee, including, if applicable, the adequacy of the debt-equity ratio of the transferee if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction.

(k) Unless the commission requires that a public hearing be held, the sale, transfer, merger, consolidation, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period described in subsection (a) of this section; or

(2) at any time after the transferee receives notice from the commission that a hearing will not be requested.

(l) Within 30 days of the commission order that allows the sale, transfer, merger, consolidation, acquisition, lease, or rental to proceed as proposed, the transferee shall provide a written update on the status of the transaction, and every 30 days thereafter, until the transaction is complete. The transferee shall inform the commission of any material changes in its financial, managerial, and technical capability to provide continuous and adequate service to the requested area and the transferee's service area.

(m) If there are outstanding customer deposits, within 30 days of the actual effective date of the transaction, the transferor and the transferee shall file with the commission, under oath, in addition to other information, a list showing the following:

(1) the names and addresses of all customers who have a deposit on record with the transferor;

(2) the date such deposit was made;

(3) the amount of the deposit; and

(4) the unpaid interest on the deposit. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.

(n) Within 30 days after the actual effective date of the transaction, the transferee and the transferor shall file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed. The signed contract, bill of sale, or other documents, must be signed by both the transferor and the transferee. If there were outstanding customer deposits, the transferor and the transferee shall also file documentation as evidence that customer deposits have been transferred or refunded to the customers with interest as required by this section.

(o) The commission's approval of a sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility expires 180 days following the date of the commission order allowing the transaction to proceed. If the sale has not been completed within that 180-day time period, the approval is void, un-

less the commission in writing extends the time period for good cause shown.

(p) If the commission does not require a hearing, and the transaction is completed as proposed, the commission may issue an order approving the transaction.

(q) A sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility required by law to possess a CCN, or transfer of customers and/or service area, owned by an entity required by law to possess a CCN that is not completed in accordance with the provisions of TWC §13.301 is void.

(r) The requirements of TWC §13.301 do not apply to:

(1) the purchase of replacement property;

(2) a transaction under TWC §13.255; or

(3) foreclosure on the physical assets of a utility.

(s) If a utility's facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its CCN, or a controlling interest in an incorporated utility, unless the utility provides a written disclosure relating to the contributions to both the transferee and the commission before the date of the sale or transfer. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(t) For any transaction subject to this section, the retail public utility that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest shall provide the other party to the transaction a copy of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest.

§24.241. Foreclosure and Bankruptcy.

(a) If a utility that is required by law to possess a certificate of convenience and necessity (CCN) receives notice that all or a portion of the utility's or system's facilities or property used to provide utility service is being posted for foreclosure, the utility shall notify the commission in writing of that fact and shall provide a copy of the foreclosure notice to the commission not later than the tenth day after the date on which the retail public utility or system receives the notice.

(b) A person other than a financial institution that forecloses on facilities used to provide utility service shall not charge or collect rates for providing retail public water or sewer service unless the person has a completed application for a CCN or to transfer the current CCN on file with the commission within 30 days after the foreclosure is completed.

(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 TWC §13.301, 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 selling, transferring, merging, consolidating, acquiring, leasing, or renting its facilities or otherwise obtaining a CCN unless the commission in writing extends the time period for good cause shown. 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.

(e) Not later than the 48th hour after a retail public utility files a bankruptcy petition, the retail public utility shall report this fact to the commission and the TCEQ in writing.

§24.243. Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility.

(a) A utility may not purchase voting stock, and a person may not acquire a controlling interest, in a utility doing business in this state unless the utility or person files a written application with the commission no later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as:

(1) a person or a combination of a person and the person's family members that possess at least 50% of a utility's voting stock; or

(2) a person that controls at least 30% of a utility's voting stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility shall be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and to the person's certificated service area, if any.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require the person to provide financial assurance to ensure continuous and adequate utility service is provided to the service area. The commission shall set the amount of financial assurance. The form of the financial assurance shall be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d) The commission may require a public hearing on the transaction if a criterion prescribed by §24.239(j) of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental) applies.

(e) Unless the commission requires that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60 day period; or

(2) at any time after the commission notifies the person or utility that a hearing will not be requested.

(f) If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase of voting stock or acquisition of a controlling interest may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

(g) The utility or person shall notify the commission within 30 days after the date that the transaction is completed.

(h) Within 30 days of the commission order that allows a utility's purchase of voting stock or a person's acquisition of a controlling interest to proceed as proposed, the utility purchasing voting stock or the person acquiring a controlling interest shall file a written update on the status of the transaction. A written update shall also be filed every 30 days thereafter, until the transaction has been completed.

(i) The commission's approval of a utility's purchase of voting stock or a person's acquisition of a controlling interest in a utility expires 180 days after the date of the commission order approving the transaction as proposed. If the transaction has not been completed

within the 180-day time period, and unless the utility purchasing voting stock or the person acquiring a controlling interest has requested and received an extension for good cause from the commission, the approval is void.

§24.245. Revocation or Amendment of a Certificate of Convenience and Necessity.

(a) Applicability. This section applies to the revocation or amendment of a certificate of convenience and necessity (CCN).

(b) Definitions.

(1) Alternate retail public utility--The retail public utility from which a landowner plans to request service after the landowner obtains expedited release under subsection (k) of this section. An alternate retail public utility is limited to the following:

(A) an existing retail public utility; or

(B) a district proposed to be created under Article 16, §59 or Article 3, §52 of the Texas Constitution.

(2) Current CCN holder--An entity that currently holds a CCN to provide service to an area for which revocation or amendment is sought.

(3) Former CCN holder--An entity that formerly held a CCN to provide service to an area that was removed from the entity's service area by revocation or amendment under this section.

(4) Prospective retail public utility--A retail public utility seeking to provide service to a requested area or to a removed area.

(5) Removed area--Area that has been removed under this section from the certificated service area of a former CCN holder.

(6) Useless or valueless property--Property that has been rendered useless or valueless to a former CCN holder by revocation or amendment, including by expedited release or streamlined expedited release, under this section.

(c) A CCN or other order of the commission in any proceeding under this section does not create a vested property right.

(d) An order of the commission issued under this section does not transfer any property, except as provided under subsection (p) of this section.

(e) A former CCN holder shall not be required to provide service within the removed area.

(f) If the CCN of any retail public utility is revoked or amended, the commission may by order require one or more other retail public utilities to provide service to the removed area, but only if each retail public utility that is to provide service consents.

(g) Cancellation. Upon written request from the current CCN holder, the commission may cancel the CCN if the current CCN holder is authorized to operate without a CCN under §24.229(c) or (e) of this title relating to Certificate of Convenience and Necessity not Required.

(h) Revocation or amendment by consent. The commission may revoke or amend any CCN with the written consent of the current CCN holder after notice and a hearing.

(i) Revocation or amendment.

(1) At any time after notice and a hearing, the commission may revoke or amend any CCN if the commission finds that any of the circumstances identified in this paragraph exist.

(A) The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area.

(B) The current CCN holder is in an affected county as defined in TWC §16.341, and the cost of providing service by the current CCN holder is so prohibitively expensive as to constitute denial of service. Absent other relevant factors, for commercial developments started after September 1, 1997 or residential developments started after September 1, 1997, the fact that the cost of obtaining service from the current CCN holder makes the development economically unfeasible does not render such cost prohibitively expensive.

(C) The current CCN holder has agreed in writing to allow another retail public utility to provide service within its certificated service area, except for an interim period, without amending its CCN.

(D) The current CCN holder has failed to file a cease-and-desist action under TWC §13.252 within 180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless good cause is demonstrated for failure to file the cease-and-desist action within 180 days.

(2) Mapping Information. For petitions submitted under this subsection or under subsection (j) of this section, mapping information is required for the requested area in accordance with §24.257 of this title relating to Mapping Requirements for Certificate of Convenience and Necessity Application.

(j) After notice to a municipality and an opportunity for a hearing, the commission may remove from the municipality's certificated service area an area that is located outside the municipality's extraterritorial jurisdictional boundary if the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area. This subsection does not apply to an area that was transferred to a municipality's certificated service area by the commission and for which the municipality has spent public funds.

(k) Expedited release.

(1) This subsection provides an alternative to revocation or amendment under subsections (h) or (i) of this section.

(2) An owner of a tract of land may petition the commission for expedited release of all or a portion of the tract of land from a current CCN holder's certificated service area if the tract of land is at least 50 acres in size and is not in a platted subdivision actually receiving service.

(3) The fact that a current CCN holder is a borrower under a federal loan program does not prevent either the granting of a petition under this subsection or an alternate retail public utility from providing service to the removed area.

(4) A landowner may not submit a petition under this subsection to the commission until at least 90 calendar days after the landowner has submitted the notice required by paragraph (5) of this subsection to the current CCN holder.

(5) The landowner shall submit to the current CCN holder a written request for service, other than a request for standard residential or commercial service. The written request shall identify the following:

(A) the tract of land or portion of the tract of land for which service is sought;

(B) the time frame within which service is needed for current and projected service demands in the tract of land;

(C) the reasonable level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternate retail public utility to provide service at the same level, and in the same manner, that is requested from the current CCN holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested, if any; and

(F) any additional information requested by the current CCN holder that is reasonably related to determining the capacity or cost of providing service at the level, in the manner, and in the time frame, requested.

(6) The landowner shall submit a petition that is verified through a notarized affidavit and demonstrates the following information:

(A) the tract of land is at least 50 acres in size and is not in a platted subdivision actually receiving service;

(B) a written request:

(i) was submitted by the landowner to the current CCN holder at least 90 calendar days before the petition was submitted to the commission; and

(ii) complied with paragraph (5) of this subsection;

(C) the current CCN holder:

(i) has refused to provide service;

(ii) cannot provide service as identified in the notice provided under paragraph (5)(A) - (D) of this subsection on a continuous and adequate basis; or

(iii) conditions the provision of service on the payment of costs not properly allocable directly to the landowner's service request, as determined by the commission;

(D) the alternate retail public utility possesses the financial, managerial, and technical capability to provide service as identified in the notice provided under paragraph (5)(A) - (D) of this subsection on a continuous and adequate basis; and

(E) a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition to the commission.

(7) The landowner shall submit, as part of the petition, the mapping information described in subsection (m) of this section.

(8) The current CCN holder may submit a response to the petition within a timeframe specified by the presiding officer.

(9) A presiding officer shall determine whether the petition is administratively complete. When the petition is determined to be administratively complete, the presiding officer shall establish a procedural schedule that is consistent with paragraph (10) of this subsection. The presiding officer may dismiss the petition if the petitioner fails to supplement or amend the petition after the presiding officer has determined that the petition is not administratively complete.

(10) The commission shall grant the petition within 60 calendar days from the date the petition was found administratively complete unless the commission makes an express finding that the landowner failed to satisfy all of the requirements of this subsection. The commission shall support its express finding with separate findings of fact and conclusions of law for each requirement based solely on the information provided by the landowner and the current CCN holder. The commission may condition the granting or denial of a petition on terms and conditions specifically related to the landowner's service request and all relevant information submitted by the landowner and the current CCN holder. The determination of what property, if any, is useless or valueless property will be made according to the procedures defined in subsection (n) of this section.

(11) Chapter 2001 of the Texas Government Code does not apply to any petition filed under this subsection. The commission's decision on the petition is subject to rehearing on the same timeline that applies to other final orders of the commission. The commission's order ruling on the petition may not be appealed.

(12) Finding regarding never having made service available.

(A) The commission is required to find only that the alternate retail public utility can provide the requested service if the current CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations to provide service to the tract of land. In such instance, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder.

(B) This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:

(i) the county has a population of more than 30,000 and less than 35,000 and borders the Red River;

(ii) the county has a population of more than 100,000 and less than 200,000 and borders a county described by clause (i) of this subparagraph;

(iii) the county has a population of 130,000 or more and is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(iv) the county has a population of more than 40,000 and less than 50,000 and contains a portion of the San Antonio River.

(C) The commission will maintain on its website a list of counties that are presumed to meet the requirements of subparagraph (B) of this paragraph.

(13) If the petitioner is a proposed district, then the commission may condition the release and CCN amendment or revocation on the final and unappealable creation of the district. The duty of the proposed district to provide continuous and adequate service is held in abeyance until this condition is satisfied.

(14) The commission may require an award of compensation to the former CCN holder under subsections (n) and (o) of this section.

(l) Streamlined expedited release.

(1) This subsection provides an alternative to the following:

(A) revocation or amendment under subsections (h) or (i) of this section; or

(B) revocation or amendment by expedited release under subsection (k) of this section.

(2) The owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if the following conditions are met:

(A) the tract of land is at least 25 acres in size;

(B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN;

(C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county; and

(D) a qualifying county under subparagraph (C) of this paragraph does not have a population of more than 45,000 and less than 47,500 and is a county:

(i) with a population of at least one million;

(ii) adjacent to a county with a population of at least one million; or

(iii) with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more.

(3) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this subparagraph.

(4) A landowner seeking streamlined expedited release under this subsection shall submit the information listed in this paragraph with the commission.

(A) The landowner shall submit a petition that is verified through a notarized affidavit and contains the following information:

(i) a statement that the petition is being submitted under TWC §13.254(a-5) and this subsection;

(ii) proof that the tract of land is at least 25 acres in size;

(iii) proof that at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county;

(iv) a statement of facts that demonstrate that the tract of land is not currently receiving service;

(v) copies of all deeds demonstrating ownership of the tract of land by the landowner; and

(vi) proof that a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition with the commission; and

(B) The landowner shall submit the mapping information described in subsection (m) of this section.

(5) The current CCN holder may submit a response to the petition within a timeframe specified by the presiding officer.

(6) The commission shall grant a petition filed under this subsection no later than the 60th calendar day after a presiding officer by order determines that the petition is administratively complete. The determination of what property, if any, is rendered useless or valueless property will be made according to the procedures defined in subsection (n) of this section.

(7) The fact that a CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection.

(8) The commission may require an award of compensation by the landowner to the former CCN holder.

(m) Mapping information.

(1) For proceedings under subsections (k) or (l) of this section, the following mapping information must be filed:

(A) a general-location map identifying the tract of land in reference to the nearest county boundary, city, or town;

(B) a detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. If ownership of the tract of land is conveyed by multiple deeds, this map should also identify the location and acreage of land conveyed by each deed; and

(C) one of the following for the tract of land:

(i) a metes-and-bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;

(ii) a recorded plat; or

(iii) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data shall include a single, continuous polygon record.

(2) Commission staff may request additional mapping information.

(3) All maps shall be filed in accordance with §22.71 and §22.72 of this title.

(n) Determination of property rendered useless or valueless.

(1) Applicability. This subsection governs the determination of whether property is rendered useless or valueless in proceedings under subsections (k) and (l) of this section.

(2) A current CCN holder has a right to intervene in a proceeding under this subsection and a right to a determination of useless or valueless property.

(3) There is a rebuttable presumption that there is no useless or valueless property if the current CCN holder fails to intervene by the intervention deadline established by the presiding officer.

(4) The current CCN holder and the petitioner may reach an agreement at any time during the pendency of a proceeding under subsections (k) or (l) of this section regarding what property is useless or valueless property, and if such an agreement is reached, they may also agree on what is the appropriate amount of compensation for such property. If the current CCN holder and the petitioner reach an agreement under this paragraph, the agreement shall be presented to the commission at an open meeting for consideration and action.

(5) The current CCN holder bears the burden to prove what property is useless or valueless property.

(6) The commission shall identify in its order granting release under subsections (k) or (l) of this section what property, if any, is useless or valueless property. This order is the commission's final determination of what property, if any, is useless or valueless property, subject to motions for rehearing in accordance with the process provided by commission rules.

(7) If the commission determines that there is not any useless or valueless property, then no proceeding under subsection (o) of this section is required.

(o) Compensation for property rendered useless or valueless.

(1) A retail public utility may not provide service directly or indirectly to the public in a removed area until any compensation ordered under this subsection is provided to the former CCN holder. Such compensation shall be for useless or valueless property, as such is determined by the commission under subsection (n) of this section.

(2) Notice of intent to provide service.

(A) After the commission has issued its order granting release under subsections (k) or (l) of this section, if a prospective retail public utility and a former CCN holder have not agreed on compensation, then the prospective retail public utility shall file a notice of intent to provide service.

(B) A notice of intent to provide service may be filed only after the commission has issued an order under subsections (k) or (l) of this section. A notice of intent filed before the commission issues its order under subsections (k) or (l) of this section is deemed to be filed on the date the commission's order is signed.

(C) The notice of intent to provide service shall include all of the information required by this subparagraph.

(i) The notice of intent shall state that it is a notice of intent to provide service under TWC §13.254(e) and this subsection.

(ii) If applicable, the notice of intent shall include an agreement between the former CCN holder and the prospective retail public utility regarding compensation for the useless or valueless property. If an agreement is filed, the agreement shall not be evidence in a future rate case.

(3) After the notice of intent to provide service is filed, a presiding officer shall establish a procedural schedule. The schedule shall ensure that the total compensation for any property identified in the order issued under subsections (k) or (l) of this section will be determined no later than the 90th day after the date the notice of intent is filed.

(4) Within ten calendar days after the filing of the notice of intent to provide service, the prospective retail public utility shall file one of the following items:

(A) a letter identifying the qualified individual or firm serving as the agreed independent appraiser; or

(B) a letter stating that the former CCN holder and prospective retail public utility will each engage its own appraiser, at its own expense.

(5) The former CCN holder has a right to intervene in a proceeding under this subsection.

(6) The former CCN holder and the prospective retail public utility may reach an agreement at any time during the pendency of a proceeding under this subsection regarding what is the appropriate amount of compensation for the useless or valueless property. If the former CCN holder and the prospective retail public utility reach an agreement under this paragraph, the agreement shall be presented to the commission at an open meeting for consideration and action.

(7) If the former CCN holder and the prospective retail public utility agree on a qualified individual or firm to serve as an independent appraiser, then all of the requirements listed in this paragraph apply.

(A) The independent appraiser shall be limited to appraising the useless or valueless property.

(B) The former CCN holder and the prospective retail public utility shall file the appraisal within 65 calendar days after the filing of the notice of intent to provide service.

(C) The prospective retail public utility shall bear the costs of the independent appraiser.

(D) The commission is bound by the independent appraiser's valuation of the useless or valueless property. The commission shall review the valuation to ensure compliance with the requirements of this section.

(8) If the former CCN holder and the prospective retail public utility do not agree on an independent appraiser, each shall engage its own qualified appraiser at its own expense.

(A) Each appraiser shall be limited to appraising the useless or valueless property.

(B) Each appraiser shall file its appraisal with the commission within 60 calendar days after the filing of the notice of intent to provide service.

(C) After the two appraisals are filed, the commission shall appoint a qualified individual or firm to serve as a third appraiser who shall make a valuation within 30 calendar days of the date the independent appraisals are filed.

(D) The third appraiser's valuation shall be limited to the useless or valueless property and may not be less than the lower appraisal valuation or more than the higher appraisal valuation.

(E) The former CCN holder and the prospective retail public utility shall each pay one-half of the cost of the third appraisal. Payment shall be made directly to the third appraiser. Proofs of payment shall be separately filed with the commission by the former CCN holder and the prospective retail public utility.

(F) The commission is bound by the third appraiser's valuation of the useless or valueless property. The commission shall review the valuation to ensure compliance with the requirements of this section.

(9) Valuation of real property. The value of real property that the commission identified in the order issued under subsections (k) or (l) of this section as useless or valueless shall be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.

(10) Valuation of personal property. The value of personal property that the commission identified in the order issued under subsections (k) or (l) of this section as useless or valueless shall be determined according to this paragraph. To ensure that compensation to a former CCN holder is just and adequate, the following factors shall be used in valuing such personal property:

(A) the amount of the former CCN holder's debt allocable to service to the removed area;

(B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;

(C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;

(D) the amount of the former CCN holder's contractual obligations allocable to the removed area;

(E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;

(F) the impact on future revenues lost from existing customers;

(G) necessary and reasonable legal expenses and professional fees; and

(H) any other relevant factors as determined by the commission.

(11) If the presiding officer determines that all requirements of this subsection have been met, the presiding officer shall issue an order setting the compensation due to the former CCN holder at the valuation established by the appraisal. This order shall be the final act of the commission, subject to motions for rehearing. Alternatively, the presiding officer may issue a proposed order for consideration by the commission.

(p) Additional conditions.

(1) If the current CCN holder did not agree in writing to a revocation or amendment sought under this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:

(A) ordering the prospective retail public utility to provide service to the entire service area of the current CCN holder; and

(B) transferring the entire CCN of the current CCN holder to the prospective retail public utility.

(2) The commission shall order the prospective retail public utility to provide service to the entire service area of the current CCN holder if the commission finds that the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers.

(A) The commission shall order the prospective retail public utility to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the prospective retail public utility's other customers and shall establish the terms under which service must be provided.

(B) The commission may order any of the following terms:

(i) transfer of debt and other contract obligations;

(ii) transfer of real and personal property;

(iii) establishment of interim rates for affected customers during specified times; and

(iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(3) The prospective retail public utility shall not charge the affected customers any transfer fee or other fee to obtain service, except for the following:

(A) the prospective retail public utility's usual and customary rates for monthly service; or

(B) interim rates set by the commission, if applicable.

(4) If the commission orders the prospective retail public utility to provide service to the entire service area of the current CCN holder, the commission shall not order compensation to the current CCN holder, the commission shall not make a determination of whether property is rendered useless or valueless under subsection (n) of this section, and the prospective retail public utility shall not file a petition under subsection (o) of this section.

§24.247. 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 TWC §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 §24.205 and §24.207 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 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 §24.11 of this title (relating to Financial Assurance), or as specified by the commission. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service after TCEQ approves the interconnecting service pursuant to 30 TAC Chapter 290 (relating to Public Drinking Water) or 30 TAC 217 (relating to Design Criteria for Domestic Wastewater Systems);

(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 §24.14 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 Texas 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.

§24.249. Cessation of Operations by a Retail Public Utility.

(a) Any retail public utility that possesses or is required to possess a certificate of convenience and necessity (CCN) and seeks to discontinue, reduce, or impair retail water or sewer utility service, except under the conditions listed in TWC §13.250(b), must file a petition with the commission which sets out the following:

(1) the action proposed by the retail public utility;

(2) the proposed effective date of the actions, which must be at least 120 days after the petition is filed with the commission;

(3) a concise statement of the reasons for proposing the action; and

(4) the part of the petitioner's service area affected by the action, including maps as described by §24.257 of this title (relating to Mapping Requirements for Certificates of Convenience and Necessity Applications).

(b) The petitioner shall file a proposed notice to customers and any other affected parties. The proposed notice shall include:

(1) the name, CCN number, if any, mailing address, and business telephone number of the petitioner;

(2) a description of the service area of the petitioner involved;

(3) the anticipated effect of the cessation of operations on the rates and services provided to all customers; and

(4) a statement that a person who wishes to intervene or comment should file a request to intervene or comments with the commission at the commission's mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326.

(c) After reviewing and, if necessary, modifying the proposed notice, the commission will provide the notice to the petitioner for mailing to:

(1) cities and neighboring retail public utilities providing the same utility service within two miles of the outer boundary of the petitioner's certificated service area;

(2) any city whose extraterritorial jurisdiction overlaps the petitioner's certificated service area;

(3) the customers of the petitioner; and

(4) any person that has requested service from the petitioner but that has not yet received service.

(d) The petitioner may be required by the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county(ies) of operation. In addition to the information specified in subsection (b) of this section, the notice shall include the following:

(1) the sale price of the facilities;

(2) the name, CCN number, if any, and mailing address of the petitioner's owner or authorized representative; and

(3) the business telephone of the petitioner.

(e) The commission may require the petitioner to deliver notice to other affected persons or agencies.

(f) If no hearing is requested by the 30th day after the required notice has been mailed or published, whichever occurs later, the commission may consider the petition for final decision without further hearing.

(g) If a hearing is requested, the petition will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

(h) Under no circumstance may any of the following entities cease operations without the approval of the regulatory authority: a retail public utility that possesses or is required to possess a CCN, a person who possesses facilities used to provide retail water or sewer utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a CCN under §24.229 of this title (relating to Certificate of Convenience and Necessity Not Required).

(i) In determining whether to authorize a retail public utility to discontinue, reduce, or impair retail water or sewer utility service, the commission shall consider, but is not limited to, the following factors:

(1) the effect on the customers and landowners;

(2) the costs associated with bringing the utility into compliance;

(3) the applicant's diligence in locating alternative sources of service;

(4) the applicant's efforts to sell the utility, such as running advertisements, contacting other retail public utilities, or discussing cooperative organization with the customers;

(5) the asking price for purchase of the utility as it relates to the undepreciated original cost of the system for ratemaking purposes;

(6) the relationship between the applicant and the original developer of the area services;

(7) the availability of alternative sources of service, such as adjacent retail public utilities or groundwater; and

(8) the feasibility of customers and landowners obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.

(j) If a utility discontinues or otherwise abandons operation of its facilities without commission authorization, the commission may appoint a temporary manager or place the utility under supervision to take over the utility's operations, management, finances, and facilities to ensure continuous and adequate retail water and/or sewer utility service.

§24.251. Exclusiveness of Certificates.

Any certificate granted under this subchapter shall not be construed to vest exclusive service or property rights in and to the area certificated.

The commission may grant, upon finding that the public convenience and necessity requires additional certification to another retail public utility or utilities, additional certification to any other retail public utility or utilities to all or any part of the area previously certificated pursuant to this chapter.

§24.253. Contracts Valid and Enforceable.

(a) If approved by the commission after notice and hearing, contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities are valid and enforceable and are incorporated into the corresponding certificates of convenience and necessity (CCNs). This section only applies to the transfer of certificated service area and customers between existing CCN holders. Nothing in this provision negates the requirements of TWC §13.301 to obtain a new CCN and document the transfer of assets and facilities between retail public utilities.

(b) Retail public utilities may request approval of a contract by filing a written petition with the commission. The written petition shall include the following:

(1) maps of the requested area in accordance with §24.257(a) of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);

(2) a copy of the executed contract or agreement;

(3) the number of customers to be transferred, if any;

(4) information described in subsection (c)(3) of this section; and

(5) any other information required by the commission.

(c) For the purpose of this section, notice under §24.235 of this title (relating to Notice Requirements for Certificate of Convenience and Necessity Applications) does not apply. Notice under this section shall be as follows:

(1) If affected customers will be transferred as part of the contract, then individual notice shall be provided to the affected customers by mail, e-mail, or hand delivery. The notice must contain the current rates, the effective date those rates were instituted, and any other information required by the commission.

(2) If the decision to enter into a contract under this section was discussed at a meeting of a city council, a water supply or sewer service corporation's board, district board, county commissioner's court, or other regulatory authority, a copy of the meeting agenda and minutes for the meeting during which the item was discussed may be considered sufficient notice.

(3) If notice was provided in accordance with paragraph (1) or (2) of this subsection, both parties to the contract under this section shall ensure that the following are filed with the commission: an affidavit attesting to the date that notice was provided and copies of the notice that was sent.

§24.255. Contents of Request for Cease and Desist Order by the Commission Under TWC §13.252.

(a) If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or provides, makes available, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of convenience and necessity (CCN), the commission may issue an order that prohibits the construction or extension of the interfering line, plant, or system or the provision of service or that prescribes terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for a commission order shall include the following:

(1) the name, CCN number, if applicable, e-mail address, phone number, and mailing address of the retail public utility making the request;

(2) the name, CCN number, if applicable, mailing address, phone number, if known, and e-mail address, if known, of the retail public utility which is to be the subject of the order;

(3) a description of the alleged interference or unlawful provision of service;

(4) a map of the service area of the requesting utility that clearly shows the location of the alleged interference or unlawful provision of service;

(5) copies of any other information or documentation which would support the position of the requesting utility; and

(6) other information as required by the commission.

(b) A request for a commission order under this section shall be filed with the commission in the form of a petition and shall contain the necessary information under subsection (a) of this section. The petition must be filed within 180 days from the date the petitioner becomes aware that another retail public utility is interfering or attempting to interfere with the operation of a line, plant or system or is providing retail water or sewer utility service within the service area of another retail public, unless the petitioner can demonstrate good cause for its failure to file such action within the 180 days.

§24.257. Mapping Requirements for Certificate of Convenience and Necessity Applications.

(a) Applications to obtain or amend a certificate of convenience and necessity (CCN) shall include the following mapping information:

(1) a general location map identifying the requested area in reference to the nearest county boundary, city, or town;

(2) a detailed map identifying the requested area in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads;

(3) one of the following for the requested area:

(A) a metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;

(B) a recorded plat; or

(C) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record; and

(4) if applicable, maps identifying any facilities for production, transmission, or distribution of services, customers, or area currently being served outside the certificated service area. Facilities shall be identified on subdivision plats, engineering planning maps, or other large scale maps. Color coding may be used to distinguish the types of facilities identified. The location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map and may be identified in reference to verifiable man-made and natural landmarks where necessary to show its actual location.

(b) All maps shall be filed under §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

§24.259. Single Certification in Incorporated or Annexed Areas.

(a) Applicability. This section applies to a requested area that also meets the following criteria:

(1) the requested area has been incorporated or annexed by a municipality;

(2) a retail public utility provides service to the requested area under a certificate of convenience and necessity (CCN); and

(3) the retail public utility that holds the CCN under which the requested area is currently certificated is one of the following:

(A) a water supply or sewer service corporation, a special utility district under chapter 65 of the Texas Water Code, or a fresh water supply district under chapter 53 of the Texas Water Code; or

(B) not a water supply or sewer service corporation, and its service area is located entirely within the boundaries of a municipality that has a population of at least 1.7 million according to the most recent federal census.

(b) Definitions. In this section, the following words and terms have the definitions provided by this subsection.

(1) Impaired property--Property remaining in the ownership of the current CCN holder after single certification that would sustain damages from the transfer of property to the municipality.

(2) Franchised utility--A retail public utility that has been granted a franchise by a municipality to provide service inside the municipal boundaries.

(3) Current CCN holder--The retail public utility that holds a CCN to provide service to the municipality's requested area.

(4) Transferred property--Property that the municipality has requested be transferred to it or to a franchised utility from the current CCN holder.

(5) Useless or valueless property--Property that would be rendered useless or valueless to the current CCN holder by single certification.

(c) Notice of intent to provide service in incorporated or annexed area. A municipality that intends to provide service itself or through a franchised utility to all or part of an annexed or incorporated area shall notify the current CCN holder in writing of the municipality's intent. The written notice to the current CCN holder shall specify the following information:

(1) the municipality's requested area;

(2) any transferred property;

(3) the municipal ordinance or other action that annexed or incorporated the municipality's requested area;

(4) what kind of service will be provided;

(5) whether a municipally owned utility or franchised utility will provide the service; and

(6) the municipally owned utility's or the franchised utility's identity and contact information.

(d) Written agreement regarding service to area. The municipality and the current CCN holder may agree in writing that all or part of the area incorporated or annexed by the municipality may receive service from a municipally owned utility, a franchised utility, or the current CCN holder, or any combination of those entities.

(1) If a franchised utility is to provide service to any part of the area, the franchised utility shall also be a party to the agreement.

(2) The executed agreement may provide for single or dual certification of all or part of the area incorporated or annexed by the municipality, for the purchase of facilities or property, and may contain any other terms agreed to by the parties.

(3) The executed agreement shall be filed with the commission. The commission shall incorporate the agreement's terms into the respective CCNs of the municipality, current CCN holder, and franchised utility, as appropriate.

(e) Application for single certification. If an agreement is not executed within 180 calendar days after the municipality provides written notice under subsection (c) of this section and the municipality intends to provide service to the municipality's requested area, the municipality shall submit an application to the commission to grant single certification to a municipally owned utility or a franchised utility.

(1) If a franchised utility will provide service to any part of the municipality's requested area, the franchised utility shall join the application.

(2) The application shall include all of the information listed in this paragraph.

(A) The application shall identify the municipal ordinance or other action that annexed or incorporated the municipality's requested area.

(B) The application shall identify the type of service that will be provided to the municipality's requested area.

(C) The application shall identify the municipally owned utility or franchised utility that will provide service to the municipality's requested area and, if each will serve part of the area, the area that each will serve.

(D) The application shall identify contact information for the current CCN holder.

(E) The application shall demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems if the municipality owns a public drinking water system.

(F) The application shall demonstrate that at least 180 calendar days have passed since the date that the municipality provided written notice under subsection (c) of this section.

(G) The application shall identify with specificity any property that the municipality requests be transferred from the current CCN holder.

(H) The application shall identify the boundaries of the municipality's incorporated area or extraterritorial jurisdiction by providing digital-mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data shall include a single, continuous polygon record.

(I) The application shall identify the municipality's requested area by providing mapping information to clearly identify the area the municipality is seeking in accordance with §24.257 of this title relating to Mapping Requirements for Certificate of Convenience and Necessity Application. Commission staff may request additional mapping information after the application is submitted.

(3) Within 30 calendar days of the filing of the application, commission staff shall file a recommendation regarding whether the application meets the requirements of this subsection.

(f) Notices for single-certification application. The applicant shall send a copy of the application to the current CCN holder by certified mail or hand-delivery on the same day that the applicant submits the application to the commission.

(g) Response to single-certification application. The current CCN holder shall file a response to the application for single certification in conformance with this subsection.

(1) The response shall be filed within 40 calendar days of the filing of the application.

(2) The response shall state the following information:

(A) whether the single certification is agreed to; and

(B) if there is no agreement for single certification, any conditions that, if met, would cause the current CCN holder to agree to single certification.

(3) In its response, the current CCN holder shall identify any useless or valueless property, or impaired property, that would result from certification of the municipality's requested area to the municipality.

(4) There is a rebuttable presumption that there is no useless or valueless property or impaired property if the current CCN holder fails to timely respond as required under paragraph (1) of this subsection. Upon motion and proof of service consistent with the requirements of subsection (f) of this section, the presiding officer may issue an order determining that there is no useless or valueless property or impaired property.

(h) Referral to SOAH.

(1) Within 50 calendar days of the filing of the application, a presiding officer shall determine whether an application for single certification meets the requirements of subsection (e) of this section.

(2) If the presiding officer determines that the application meets the requirements of subsection (e) of this section, the application shall be referred to the State Office of Administrative Hearings (SOAH) for a hearing. SOAH shall fix a time and place for a hearing on the application and shall notify the current CCN holder, municipality, and franchised utility, if any, of the hearing.

(3) Except as provided under paragraph (4) of this subsection, if the presiding officer determines that the application does not meet the requirements of subsection (e) of this section, the applicant shall supplement its application to correct the identified deficiencies within a timeframe, and under a process, established by the presiding officer.

(4) The application shall be denied if the municipality fails to demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems. This paragraph does not apply to a municipality that does not own a public drinking water system.

(i) Hearing at SOAH.

(1) The hearing at SOAH shall be limited to determining what property, if any, is useless or valueless property, impaired property, or transferred property.

(2) The current CCN holder bears the burden to prove what property is useless or valueless property or impaired property.

(3) The transferred property shall be limited to the specific property identified in the application.

(4) The SOAH administrative law judge shall issue a proposal for decision for the commission's consideration.

(j) Interim order. The commission shall issue an interim order identifying what property, if any, is useless or valueless property, impaired property, or transferred property.

(k) Administrative Completeness. Section 24.8 of this title relating to Administrative Completeness does not apply to the determination of administrative completeness under this section. After the commission has issued its interim order under subsection (j) of this section, a presiding officer shall determine that the application for single certification is administratively complete and shall establish a procedural schedule that will allow total compensation for any property identified in the interim order to be determined not later than 90 calendar days after the application is determined to be administratively complete.

(l) Valuation of real property. The value of real property that the commission identified in the interim order issued under subsection (j) of this section shall be determined according to the standards set forth in Texas Property Code, chapter 21, governing actions in eminent domain.

(m) Valuation of personal property. The value of personal property that the commission identified in the interim order issued under subsection (j) of this section shall be determined according to this subsection.

(1) This subsection is intended to ensure that the compensation to a current CCN holder is just and adequate as provided by these rules.

(2) The following factors shall be used to value personal property that the commission identified in the interim order issued under subsection (j) of this section:

(A) the impact on the current CCN holder's existing indebtedness and the current CCN holder's ability to repay that debt;

(B) the value of the current CCN holder's service facilities located within the municipality's requested area;

(C) the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the municipality's requested area;

(D) the amount of the current CCN holder's contractual obligations allocable to the municipality's requested area;

(E) any demonstrated impairment of service or increase of cost to the current CCN holder's customers that remain after the single certification;

(F) the impact on future revenues lost from existing customers;

(G) necessary and reasonable legal expenses and professional fees;

(H) factors relevant to maintaining the current financial integrity of the current CCN holder; and

(I) other relevant factors as determined by the commission.

(n) Valuation Process.

(1) For an area incorporated by a municipality, the valuation of property that the commission identified in the interim order issued under subsection (j) of this section shall be determined by a qualified individual or firm serving as an independent appraiser. The independent appraiser shall be limited to appraising the property that

the commission identified in the interim order issued under subsection (j) of this section. The current CCN holder shall select the independent appraiser by the 21st calendar day after the date of the order determining that the application is administratively complete. The municipality shall pay the independent appraiser's costs. The independent appraiser shall file its appraisal with the commission by the 70th calendar day after the date of the order determining that the application is administratively complete. The valuation of property under this paragraph is binding on the commission.

(2) For an area annexed by a municipality, the valuation of property that the commission identified in the interim order issued under subsection (j) of this section shall be determined by one or more independent appraisers under the process set forth in this paragraph. All independent appraisers shall be limited to appraising the property that the commission identified in the interim order issued under subsection (j) of this section. All independent appraisers shall be qualified individuals or firms.

(A) If the current CCN holder and the municipality can agree on an independent appraiser within ten calendar days after the application is found administratively complete, the agreed-upon independent appraiser shall make a valuation of the property that the commission identified in the interim order issued under subsection (j) of this section.

(i) The agreed-upon independent appraiser shall file its appraisal with the commission by the 70th calendar day after the date of the order determining that the application is administratively complete.

(ii) A valuation of property under this subparagraph is binding on the commission.

(B) If the current CCN holder and the municipality cannot agree on an independent appraiser within ten calendar days after the application is found administratively complete, the municipality shall notify the serving CCN holder in writing of the failure to agree.

(i) If the parties still cannot agree within 11 calendar days of the written notification, on the 11th day, the current CCN holder and the municipality shall each file with the commission a letter appointing a qualified individual or firm to serve as an independent appraiser.

(I) Within 10 business days of their appointment, the independent appraisers shall meet to reach an agreed valuation of property that the commission identified in the interim order issued under subsection (j) of this section.

(II) If the independent appraisers reach an agreed valuation of property, the agreed valuation under this subclause is binding on the commission.

(ii) If the appraisers cannot agree on a valuation before the 16th business day after the date of their first meeting under this subsection, then both parties shall file separate appraisals by that date, and either the current CCN holder or the municipality shall petition the commission to appoint a third appraiser to reconcile the two appraisals.

(I) The commission may delegate authority to appoint the third appraiser.

(II) The third appraiser shall file an appraisal that reconciles the two other appraisals by the 80th calendar day after the application is found administratively complete.

(III) The third appraiser's valuation may not be less than the lower or more than the higher of the two original appraisals filed under subparagraph (B)(ii) of this paragraph.

(IV) A valuation of property under this clause is binding on the commission.

(C) The current CCN holder and the municipality shall each pay one-half of the costs of all of the appraisers appointed under this paragraph. Payment shall be made directly to the appraisers, and proofs of payment shall be separately filed by the current CCN holder and the prospective retail public utility within 30 calendar days of the date of the invoice.

(o) Action after receipt of appraisals.

(1) An order incorporating the valuation determined under subsection (n) of this section shall be issued by the 90th calendar day after the application is found administratively complete.

(2) The commission shall deny the application if the municipality fails to demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems. This paragraph does not apply to a municipality that does not own a public drinking water system.

(3) If the commission does not deny the application, the commission shall do the following:

(A) determine what property, if any, is useless or valueless property, impaired property, or transferred property;

(B) determine the monetary amount that is adequate and just to compensate the current CCN holder for any such useless or valueless property, impaired property, and transferred property; and

(C) grant single certification to the municipality or franchised utility.

(4) The granting of single certification shall be effective on the date that:

(A) the municipality or franchised utility pays adequate and just compensation under a court order;

(B) the municipality or franchised utility pays an amount into the registry of the court or to the current CCN holder under TWC §13.255(f); or

(C) the Travis County district court's judgment becomes final, if the court's judgment provides that the current CCN holder is not entitled to any compensation.

(5) The commission's order does not transfer any property, except as provided under subsection (u) of this section. Any other transfer of property under this section shall be obtained only by a court judgment rendered under TWC §13.255(d) or (e).

(6) A presiding officer may issue an order under this section. Any such order shall be the final act of the commission subject to motions for rehearing under the commission's rules.

(p) Appeal to district court, district court judgment, and transfer of property.

(1) Under TWC §13.255(e), any party that is aggrieved by a final order of the commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final.

(2) Under TWC §13.255(d), if the commission's final order is not appealed within 30 days, the municipality may request the Travis County district court to enter a judgment consistent with the commission's order.

(q) Withdrawal of application for single certification. A municipality or a franchised utility may withdraw an application for single

certification without prejudice at any time before a court judgment becomes final, provided that the municipality or the franchised utility has not taken physical possession of property owned by the current CCN holder or made payment for the right to take physical possession under TWC §13.255(f).

(r) Additional requirements regarding certain current CCN holders. The following subsection applies to proceedings under this section in which the current CCN holder meets the criteria of subsection (a)(3)(B) of this section.

(1) The commission or a court, as appropriate, must determine that the service provided by the current CCN holder is substandard or its rates are unreasonable in view of the current CCN holder's reasonable expenses.

(2) If the municipality abandons its application, the commission is authorized to award to the current CCN holder its reasonable expenses incurred to participate in the proceeding addressing the municipality's application, including attorney's fees.

(3) Unless the current CCN holder otherwise agrees, the municipality shall take all of the current CCN holder's personal and real property that is used and useful to provide service or is eligible to be deemed so in a future rate case.

(s) Notice of single certification. Within 60 days of a transfer of property under a court judgment, the municipality or franchised utility shall provide written notice to each customer within the service area that is now singly certificated. The written notice shall provide the following information: the identity of the municipality or franchised utility, the reason for the transfer, the rates to be charged by the municipality or franchised utility, and the effective date of those rates.

(t) Provision of service.

(1) A municipally owned utility or a franchised utility may provide service to all or a portion of an incorporated or annexed area on one of the following dates:

(A) the date that the commission incorporates the terms of an executed agreement filed with the commission under subsection (d)(3) of this section into the CCNs of the municipality, current CCN holder, and franchised utility, if applicable; or

(B) the date that the municipality or franchised utility:

(i) pays adequate and just compensation under court order; or

(ii) pays an amount into the registry of the court or to the current CCN holder under TWC §13.255(f).

(2) If the court judgment provides that the current CCN holder is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final.

(u) Additional conditions.

(1) If the current CCN holder did not agree in writing to a revocation or amendment sought under this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:

(A) ordering the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder; and

(B) transferring the entire CCN of the current CCN holder to the municipality or franchised utility, as applicable.

(2) The commission shall order the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder if the commission finds that the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers.

(A) The commission shall order the municipality or franchised utility, as applicable, to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the municipality's or franchised utility's other customers and shall establish the terms under which service must be provided.

(B) The commission may order the following terms:

(i) transfer of debt and other contract obligations;

(ii) transfer of real and personal property;

(iii) establishment of interim service rates for affected customers during specified times; and

(iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(3) The municipality or franchised utility, as applicable, shall not charge the affected customers any transfer fee or other fee to obtain service, except:

(A) the municipality's or franchised utility's usual and customary rates for monthly service, or

(B) interim rates set by the commission, if applicable.

(4) If the commission orders the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder, the proceeding shall not be referred to SOAH for a hearing to determine the useless or valueless property, impaired property, or transferred property, and the commission shall not order compensation to the current CCN holder.

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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER I. WATER UTILITY SUBMETERING AND ALLOCATION

16 TAC §§24.275, 24.277, 24.279, 24.281, 24.283, 24.285, 24.287

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.275. General Rules and Definitions.

(a) Purpose and scope. The provisions of this subchapter are intended to establish a comprehensive regulatory system to assure that

the practices involving submetered and allocated billing of dwelling units and multiple use facilities for water and sewer utility service are just and reasonable and include appropriate safeguards for tenants.

(b) Application. The provisions of this subchapter apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis. The provisions of this subchapter do not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to water and sewer utility service costs.

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

(1) Allocated utility service--Water or wastewater utility service that is master metered to an owner by a retail public utility and allocated to tenants by the owner.

(2) Apartment house--A building or buildings containing five or more dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rent paid at intervals of one month or more.

(3) Condominium manager--A condominium unit owners' association organized under Texas Property Code §82.101, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code. Condominium Manager and Manager of a Condominium have the same meaning.

(4) Customer service charge--A customer service charge is a rate that is not dependent on the amount of water used through the master meter.

(5) Dwelling unit--One or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; a unit in a multiple use facility; or a manufactured home in a manufactured home rental community.

(6) Dwelling unit base charge--A flat rate or fee charged by a retail public utility for each dwelling unit recorded by the retail public utility.

(7) Manufactured home rental community--A property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

(8) Master meter--A meter used to measure, for billing purposes, all water usage of an apartment house, condominium, multiple use facility, or manufactured home rental community, including common areas, common facilities, and dwelling units.

(9) Multiple use facility--A commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use and are rented at intervals of one month or longer.

(10) Occupant--A tenant or other person authorized under a written agreement to occupy a dwelling.

(11) Overcharge--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter. Overcharge and Overbilling have the same meaning.

(12) Owner--The legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; and any individual, firm, or corporation expressly identified in the lease agreement as the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility. The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.

(13) Point-of-use submeter--A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.

(14) Submetered utility service--Water utility service that is master metered for the owner by the retail public utility and individually metered by the owner at each dwelling unit; wastewater utility service based on submetered water utility service; water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters.

(15) Tenant--A person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and, if rent is paid, who is obligated to pay for the occupancy under a written or oral rental agreement.

(16) Undercharge--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit less than the amount the tenant would have been charged under this subchapter. Undercharge and Underbilling have the same meaning.

(17) Utility costs--Any amount charged to the owner by a retail public utility for water or wastewater service. Utility Costs and Utility Service Costs have the same meaning.

(18) Utility service--For purposes of this subchapter, utility service includes only drinking water and wastewater.

§24.277. Owner Registration and Records.

(a) Registration. An owner who intends to bill tenants for submetered or allocated utility service or who changes the method used to bill tenants for utility service shall register with the commission in a form prescribed by the commission.

(b) Water quantity measurement. Except as provided by subsections (c) and (d) of this section, a manager of a condominium or the owner of an apartment house, manufactured home rental community, or multiple use facility, on which construction began after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of:

(1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or

(2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.

(c) Plumbing system requirement. An owner of an apartment house on which construction began after January 1, 2003, and that provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.

(d) Installation of individual meters. On the request by the property owner or manager, a retail public utility shall install individual

meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or condominium on which construction began after January 1, 2003, unless the retail public utility determines that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters.

(e) Records. The owner shall make the following records available for inspection by the tenant or the commission or commission staff at the on-site manager's office during normal business hours in accordance with subsection (g) of this section. The owner may require that the request by the tenant be in writing and include:

(1) a current and complete copy of TWC, Chapter 13, Subchapter M;

(2) a current and complete copy of this subchapter;

(3) a current copy of the retail public utility's rate structure applicable to the owner's bill;

(4) information or tips on how tenants can reduce water usage;

(5) the bills from the retail public utility to the owner;

(6) for allocated billing:

(A) the formula, occupancy factors, if any, and percentages used to calculate tenant bills;

(B) the total number of occupants or equivalent occupants if an equivalency factor is used under §24.281(e)(2) of this title (relating to Charges and Calculations); and

(C) the square footage of the tenant's dwelling unit or rental space and the total square footage of the apartment house, manufactured home rental community, or multiple use facility used for billing if dwelling unit size or rental space is used;

(7) for submetered billing:

(A) the calculation of the average cost per gallon, liter, or cubic foot;

(B) if the unit of measure of the submeters or point-of-use submeters differs from the unit of measure of the master meter, a chart for converting the tenant's submeter measurement to that used by the retail public utility;

(C) all submeter readings; and

(D) all submeter test results;

(8) the total amount billed to all tenants each month;

(9) total revenues collected from the tenants each month to pay for water and wastewater service; and

(10) any other information necessary for a tenant to calculate and verify a water and wastewater bill.

(f) Records retention. Each of the records required under subsection (e) of this section shall be maintained for the current year and the previous calendar year, except that all submeter test results shall be maintained until the submeter is permanently removed from service.

(g) Availability of records.

(1) If the records required under subsection (e) of this section are maintained at the on-site manager's office, the owner shall make the records available for inspection at the on-site manager's office within three days after receiving a written request.

(2) If the records required under subsection (e) of this section are not routinely maintained at the on-site manager's office, the owner shall provide copies of the records to the on-site manager within 15 days of receiving a written request from a tenant or the commission or commission staff.

(3) If there is no on-site manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant.

(4) Copies of the records may be provided by mail if postmarked by midnight of the last day specified in paragraph (1), (2), or (3) of this subsection.

§24.279. Rental Agreement.

(a) Rental agreement content. The rental agreement between the owner and tenant shall clearly state in writing:

(1) the tenant will be billed by the owner for submetered or allocated utility services, whichever is applicable;

(2) which utility services will be included in the bill issued by the owner;

(3) any disputes relating to the computation of the tenant's bill or the accuracy of any submetering device will be between the tenant and the owner;

(4) the average monthly bill for all dwelling units in the previous calendar year and the highest and lowest month's bills for that period;

(5) if not submetered, a clear description of the formula used to allocate utility services;

(6) information regarding billing such as meter reading dates, billing dates, and due dates;

(7) the period of time by which owner will repair leaks in the tenant's unit and in common areas, if common areas are not submetered;

(8) the tenant has the right to receive information from the owner to verify the utility bill; and

(9) for manufactured home rental communities and apartment houses, the service charge percentage permitted under §24.281(d)(3) of this title (relating to Charges and Calculations) that will be billed to tenants.

(b) Requirement to provide rules. At the time a rental agreement is discussed, the owner shall provide a copy of this subchapter or a copy of the rules to the tenant to inform the tenant of his rights and the owner's responsibilities under this subchapter.

(c) Tenant agreement to billing method changes. An owner shall not change the method by which a tenant is billed unless the tenant has agreed to the change by signing a lease or other written agreement. The owner shall provide notice of the proposed change at least 35 days prior to implementing the new method.

(d) Change from submetered to allocated billing. An owner shall not change from submetered billing to allocated billing, except after receiving written approval from the commission after a demonstration of good cause and if the rental agreement requirements under subsections (a), (b), and (c) of this section have been met. Good cause may include:

(1) equipment failures; or

(2) meter reading or billing problems that could not feasibly be corrected.

(e) Waiver of tenant rights prohibited. A rental agreement provision that purports to waive a tenant's rights or an owner's responsibilities under this subchapter is void.

§24.281. Charges and Calculations.

(a) Prohibited charges. Charges billed to tenants for submetered or allocated utility service may only include bills for water or wastewater from the retail public utility and must not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.

(b) Dwelling unit base charge. If the retail public utility's rate structure includes a dwelling unit base charge, the owner shall bill each dwelling unit for the base charge applicable to that unit. The owner may not bill tenants for any dwelling unit base charges applicable to unoccupied dwelling units.

(c) Customer service charge. If the retail public utility's rate structure includes a customer service charge, the owner shall bill each dwelling unit the amount of the customer service charge divided by the total number of dwelling units, including vacant units, that can receive service through the master meter serving the tenants.

(d) Calculations for submetered utility service. The tenant's submetered charges must include the dwelling unit base charge and customer service charge, if applicable, and the gallonage charge and must be calculated each month as follows:

(1) water utility service: the retail public utility's total monthly charges for water service (less dwelling unit base charges or customer service charges, if applicable), divided by the total monthly water consumption measured by the retail public utility to obtain an average water cost per gallon, liter, or cubic foot, multiplied by the tenant's monthly consumption or the volumetric rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

(2) wastewater utility service: the retail public utility's total monthly charges for wastewater service (less dwelling unit base charges or customer service charges, if applicable), divided by the total monthly water consumption measured by the retail public utility, multiplied by the tenant's monthly consumption or the volumetric wastewater rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

(3) service charge for manufactured home rental community or the owner or manager of apartment house: a manufactured home rental community or apartment house may charge a service charge in an amount not to exceed 9% of the tenant's charge for submetered water and wastewater service, except when;

(A) the resident resides in a unit of an apartment house that has received an allocation of low income housing tax credits under Texas Government Code, Chapter 2306, Subchapter DD; or

(B) the apartment resident receives tenant-based voucher assistance under United States Housing Act of 1937 Section 8, (42 United States Code, §1437f); and

(4) final bill on move-out for submetered service: if a tenant moves out during a billing period, the owner may calculate a final bill for the tenant before the owner receives the bill for that period from the retail public utility. If the owner is billing using the average water or wastewater cost per gallon, liter, or cubic foot as described in paragraph (1) of this subsection, the owner may calculate the tenant's bill by calculating the tenant's average volumetric rate for the last three months and multiplying that average volumetric rate by the tenant's consumption for the billing period.

(e) Calculations for allocated utility service.

(1) Before an owner may allocate the retail public utility's master meter bill for water and sewer service to the tenants, the owner shall first deduct:

(A) dwelling unit base charges or customer service charge, if applicable; and

(B) common area usage such as installed landscape irrigation systems, pools, and laundry rooms, if any, as follows:

(i) if all common areas are separately metered or submetered, deduct the actual common area usage;

(ii) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is an installed landscape irrigation system, deduct at least 25% of the retail public utility's master meter bill;

(iii) if all water used for an installed landscape irrigation system is metered or submetered and there are other common areas such as pools or laundry rooms that are not metered or submetered, deduct at least 5% of the retail public utility's master meter bill; or

(iv) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is no installed landscape irrigation system, deduct at least 5% of the retail public utility's master meter bill.

(2) To calculate a tenant's bill:

(A) for an apartment house, the owner shall multiply the amount established in paragraph (1) of this subsection by:

(i) the number of occupants in the tenant's dwelling unit divided by the total number of occupants in all dwelling units at the beginning of the month for which bills are being rendered; or

(ii) the number of occupants in the tenant's dwelling unit using a ratio occupancy formula divided by the total number of occupants in all dwelling units at the beginning of the retail public utility's billing period using the same ratio occupancy formula to determine the total. The ratio occupancy formula will reflect what the owner believes more accurately represents the water use in units that are occupied by multiple tenants. The ratio occupancy formula that is used must assign a fractional portion per tenant of no less than that on the following scale:

(I) dwelling unit with one occupant = 1;

(II) dwelling unit with two occupants = 1.6;

(III) dwelling unit with three occupants = 2.2; or

(IV) dwelling unit with more than three occupants = 2.2 + 0.4 per each additional occupant over three; or

(iii) the average number of occupants per bedroom, which shall be determined by the following occupancy formula. The formula must calculate the average number of occupants in all dwelling units based on the number of bedrooms in the dwelling unit according to the scale below, notwithstanding the actual number of occupants in each of the dwelling unit's bedrooms or all dwelling units:

(I) dwelling unit with an efficiency = 1;

(II) dwelling unit with one bedroom = 1.6;

(III) dwelling unit with two bedrooms = 2.8;

(IV) dwelling unit with three bedrooms = 4 + 1.2 for each additional bedroom; or

(iv) a factor using a combination of square footage and occupancy in which no more than 50% is based on square footage. The square footage portion must be based on the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house; or

(v) the individually submetered hot or cold water usage of the tenant's dwelling unit divided by all submetered hot or cold water usage in all dwelling units;

(B) a condominium manager shall multiply the amount established in paragraph (1) of this subsection by any of the factors under subparagraph (A) of this paragraph or may follow the methods outlined in the condominium contract;

(C) for a manufactured home rental community, the owner shall multiply the amount established in paragraph (1) of this subsection by:

(i) any of the factors developed under subparagraph (A) of this paragraph; or

(ii) the area of the individual rental space divided by the total area of all rental spaces; and

(D) for a multiple use facility, the owner shall multiply the amount established in paragraph (1) of this subsection by:

(i) any of the factors developed under subparagraph (A) of this paragraph; or

(ii) the square footage of the rental space divided by the total square footage of all rental spaces.

(3) If a tenant moves in or out during a billing period, the owner may calculate a bill for the tenant. If the tenant moves in during a billing period, the owner shall prorate the bill by calculating a bill as if the tenant were there for the whole month and then charging the tenant for only the number of days the tenant lived in the unit divided by the number of days in the month multiplied by the calculated bill. If a tenant moves out during a billing period before the owner receives the bill for that period from the retail public utility, the owner may calculate a final bill. The owner may calculate the tenant's bill by calculating the tenant's average bill for the last three months and multiplying that average bill by the number of days the tenant was in the unit divided by the number of days in that month.

(f) Conversion to approved allocation method. An owner using an allocation formula other than those approved in subsection (e) of this section shall immediately provide notice as required under §24.279(c) of this title (relating to Rental Agreement) and either:

(1) adopt one of the methods in subsection (e) of this section; or

(2) install submeters and begin billing on a submetered basis; or

(3) discontinue billing for utility services.

§24.283. Billing.

(a) Monthly billing of total charges. The owner shall bill the tenant each month for the total charges calculated under §24.281 of this title (relating to Charges and Calculations). If it is permitted in the rental agreement, an occupant or occupants who are not residing in the rental unit for a period longer than 30 days may be excluded from the occupancy calculation and from paying a water and sewer bill for that period.

(b) Rendering bill.

(1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public utility bill.

(2) Submeter bills shall be rendered as promptly as possible after the owner receives the retail public utility bill or according to the time schedule in the rental agreement if the owner is billing using the retail public utility's rate.

(c) Submeter reading schedule. Submeters or point-of-use submeters shall be read within three days of the scheduled reading date of the retail public utility's master meter or according to the schedule in the rental agreement if the owner is billing using the retail public utility's rate.

(d) Billing period.

(1) Allocated bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period.

(2) Submeter bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period. If the owner uses the retail public utility's actual rate, the billing period may be an alternate billing period specified in the rental agreement.

(e) Multi-item bill. If issued on a multi-item bill, charges for submetered or allocated utility service must be separate and distinct from any other charges on the bill.

(f) Information on bill. The bill must clearly state that the utility service is submetered or allocated, as applicable, and must include all of the following:

(1) total amount due for submetered or allocated water;

(2) total amount due for submetered or allocated wastewater;

(3) total amount due for dwelling unit base charge(s) or customer service charge(s) or both, if applicable;

(4) total amount due for water or wastewater usage, if applicable;

(5) the name of the retail public utility and a statement that the bill is not from the retail public utility;

(6) name and address of the tenant to whom the bill is applicable;

(7) name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute; and

(8) name, address, and telephone number of the party to whom payment is to be made.

(g) Information on submetered service. In addition to the information required in subsection (f) of this section, a bill for submetered service must include all of the following:

(1) the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters;

(2) the cost per gallon, liter, or cubic foot for each service provided; and

(3) total amount due for a service charge charged by an owner of a manufactured home rental community, if applicable.

(h) Due date. The due date on the bill may not be less than 16 days after it is mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend, in which case the following

work day will be the due date. The owner shall record the date the bill is mailed or hand delivered. A payment is delinquent if not received by the due date.

(i) Estimated bill. An estimated bill may be rendered if a master meter, submeter, or point-of-use submeter has been tampered with, cannot be read, or is out of order; and in such case, the bill must be distinctly marked as an estimate and the subsequent bill must reflect an adjustment for actual charges.

(j) Payment by tenant. Unless utility bills are paid to a third-party billing company on behalf of the owner, or unless clearly designated by the tenant, payment must be applied first to rent and then to utilities.

(k) Overbilling and underbilling. If a bill is issued and subsequently found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment must be calculated for all of that tenant's bills that included overcharges. If the overbilling or underbilling affects all tenants, an adjustment must be calculated for all of the tenants' bills. If the tenant was undercharged, and the cause was not due to submeter or point-of-use submeter error, the owner may calculate an adjustment for bills issued in the previous six months. If the total undercharge is $25 or more, the owner shall offer the tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be back billed to a current tenant.

(l) Disputed bills. In the event of a dispute between a tenant and an owner regarding any bill, the owner shall investigate the matter and report the results of the investigation to the tenant in writing. The investigation and report must be completed within 30 days from the date the tenant gives written notification of the dispute to the owner.

(m) Late fee. A one-time penalty not to exceed 5% may be applied to delinquent accounts. If such a penalty is applied, the bill must indicate the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease that states the percentage amount of such late penalty.

§24.285. Complaint Jurisdiction.

(a) Jurisdiction. The commission has exclusive jurisdiction for violations under this subchapter.

(b) Complaints. If an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a commission rule regarding utility costs, the person claiming the violation may file a complaint with the commission and may appear remotely for a hearing.

§24.287. Submeters or Point-of-Use Submeters and Plumbing Fixtures.

(a) Submeters or point-of-use submeters.

(1) Same type submeters or point-of-use submeters required. All submeters or point-of-use submeters throughout a property must use the same unit of measurement, such as gallon, liter, or cubic foot.

(2) Installation by owner. The owner shall be responsible for providing, installing, and maintaining all submeters or point-of-use submeters necessary for the measurement of water to tenants and to common areas, if applicable.

(3) Submeter or point-of-use submeter tests prior to installation. No submeter or point-of-use submeter may be placed in service unless its accuracy has been established. If any submeter or point-of-use submeter is removed from service, it must be properly tested and calibrated before being placed in service again.

(4) Accuracy requirements for submeters and point-of-use submeters. Submeters must be calibrated as close as possible to the condition of zero error and within the accuracy standards established by the American Water Works Association (AWWA) for water meters. Point-of-use submeters must be calibrated as closely as possible to the condition of zero error and within the accuracy standards established by the American Society of Mechanical Engineers (ASME) for point-of-use and branch- water submetering systems.

(5) Location of submeters and point-of-use submeters. Submeters and point-of-use submeters must be installed in accordance with applicable plumbing codes and AWWA standards for water meters or ASME standards for point-of-use submeters, and must be readily accessible to the tenant and to the owner for testing and inspection where such activities will cause minimum interference and inconvenience to the tenant.

(6) Submeter and point-of-use submeter records. The owner shall maintain a record on each submeter or point-of-use submeter which includes:

(A) an identifying number;

(B) the installation date (and removal date, if applicable);

(C) date(s) the submeter or point-of-use submeter was calibrated or tested;

(D) copies of all tests; and

(E) the current location of the submeter or point-of-use submeter.

(7) Submeter or point-of-use submeter test on request of tenant. Upon receiving a written request from the tenant, the owner shall either:

(A) provide evidence, at no charge to the tenant, that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months and determined to be within the accuracy standards established by the AWWA for water meters or ASME standards for point-of-use submeters; or

(B) have the submeter or point-of-use submeter removed and tested and promptly advise the tenant of the test results.

(8) Billing for submeter or point-of-use submeter test.

(A) The owner may not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards for water meters or ASME standards for point-of-use submeters.

(B) The owner may not bill the tenant for testing costs if there is no evidence that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months.

(C) The owner may bill the tenant for actual testing costs (not to exceed $25) if the submeter meets AWWA accuracy standards or the point-of-use submeter meets ASME accuracy standards and evidence as described in paragraph (7)(A) of this subsection was provided to the tenant.

(9) Bill adjustment due to submeter or point-of-use submeter error. If a submeter does not meet AWWA accuracy standards or a point-of-use submeter does not meet ASME accuracy standards and the tenant was overbilled, an adjusted bill must be rendered in accordance with §24.283(k) of this title (relating to Billing). The owner may not charge the tenant for any underbilling that occurred because the submeter or point-of-use submeter was in error.

(10) Submeter or point-of-use submeter testing facilities and equipment. For submeters, an owner shall comply with the AWWA's meter testing requirements. For point-of-use meters, an owner shall comply with ASME's meter testing requirements.

(b) Plumbing fixtures. After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager shall adhere to the following standards:

(1) Texas Health and Safety Code, §372.002, for sink or lavatory faucets, faucet aerators, and showerheads;

(2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found; and

(3) not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service, the owner or manager shall:

(A) remove any toilets that exceed a maximum flow of 3.5 gallons per flush; and

(B) install toilets that meet the standards prescribed by Texas Health and Safety Code, §372.002.

(c) Plumbing fixture not applicable. Subsection (b) of this section does not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.

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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER J. WHOLESALE WATER OR SEWER SERVICE

16 TAC §§24.301, 24.303, 24.305, 24.307, 24.309, 24.311, 24.313, 24.315, 24.317, 24.319, 24.321

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.301. Petition or Appeal Concerning Wholesale 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 TWC, Chapter 12; or

(2) an appeal pursuant to TWC, §13.043(f) (appeal by retail public utility concerning a decision by a provider of water or sewer service).

§24.303. Definitions.

For purposes of this subchapter, the following definitions apply:

(1) Petitioner--The entity that files the petition or appeal.

(2) Protested rate--The rate demanded by the seller.

(3) Cash Basis calculation of cost of service--A calculation of the revenue requirement to which a seller is entitled to cover all cash needs, including debt obligations as they come due. Basic revenue requirement components considered under the cash basis generally include operation and maintenance expense, debt service requirements, and capital expenditures which are not debt financed. Other cash revenue requirements should be considered where applicable. Basic revenue requirement components under the cash basis do not include depreciation.

(4) Utility Basis calculation of cost of service--A calculation of the revenue requirement to which a seller is entitled which includes a return on investment over and above operating costs. Basic revenue requirement components considered under the utility basis generally include operation and maintenance expense, depreciation, and return on investment.

§24.305. Petition or Appeal.

(a) The petitioner must file a written petition with the commission. 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.

(c) The petitioner must file an appeal pursuant to TWC, §13.043(f) in accordance with the time frame provided therein.

§24.307. Commission's Review of Petition or Appeal Concerning Wholesale Rate.

(a) When a petition or appeal is filed, the commission shall determine within 30 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 initial review of probable grounds shall be limited to a determination whether the petitioner has met the requirements §24.305 of this title (relating to Petition or Appeal). If the commission determines that the petition or appeal does not meet the requirements of §24.305 of this title, the commission shall inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies. If the commission determines that the petition or appeal does meet the requirements of §24.305 of this title, the commission shall forward the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing.

(b) For a petition or appeal to review a rate that is charged pursuant to a written contract, the commission 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 commission 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.

§24.309. Evidentiary Hearing on Public Interest.

(a) If the commission forwards a petition to the State Office of Administrative Hearings pursuant to §24.307(a) and (b) of this title (relating to Commission's Review of Petition or Appeal), the State Office of Administrative Hearings shall conduct an evidentiary hearing on public interest to determine whether the protested rate adversely affects the public interest.

(b) Prior to the evidentiary hearing on public interest, discovery shall be limited to matters relevant to the evidentiary hearing on public interest.

(c) The administrative law judge shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law concerning whether the protested rate adversely affects the public interest, and shall submit this recommendation to the commission.

(d) The seller and buyer may agree to consolidate the evidentiary hearing on public interest and the evidentiary hearing on cost of service. If the seller and buyer so agree the administrative law judge shall hold a consolidated evidentiary hearing.

§24.311. Determination of Public Interest.

(a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concludes at least one of the following public interest criteria have been violated:

(1) the protested rate impairs the seller's ability to continue to provide service, based on the seller's financial integrity and operational capability;

(2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, based on the purchaser's financial integrity and operational capability;

(3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:

(A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;

(B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;

(C) the seller changed the computation of the revenue requirement or rate from one methodology to another;

(D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;

(E) incentives necessary to encourage regional projects or water conservation measures;

(F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;

(G) the rates charged in Texas by other sellers of water or sewer service for resale; or

(H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser; or

(4) the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.

(b) The commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service.

§24.313. Commission Action to Protect Public Interest, Set Rate.

(a) If as a result of the evidentiary hearing on public interest the commission determines the protested rate does not adversely affect the public interest, the commission will deny the petition or appeal by final order. The commission must state in the final order that dismisses a petition or appeal the bases upon which the commission finds the protested rate does not adversely affect the public interest.

(b) If the commission determines the protested rate adversely affects the public interest, the commission will remand the matter to the State Office of Administrative Hearings for further evidentiary proceedings on the rate. The remand order is not a final order subject to judicial review.

(c) No later than 90 days after the petition or appeal is forwarded to the State Office of Administrative Hearings for an evidentiary hearing on the rate pursuant to subsection (b) of this section or §24.307(a) and (c) of this title (relating to Commission's Review of Petition or Appeal), the seller shall file with the commission a cost of service study and other information which supports the protested rate

(d) Prior to the evidentiary hearing on the rate, discovery shall be limited to matters relevant to the evidentiary hearing on the rate.

(e) The administrative law judge shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law recommending a rate and shall submit this recommendation to the commission. The commission shall set a rate consistent with the ratemaking mandates of TWC, Chapters 12 and 13. If the protested rate was charged pursuant to a written contract, the commission must state in a final order the bases upon which the commission finds the protested rate adversely affects the public interest.

§24.315. Determination of Cost of Service.

(a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

(b) When the protested rate was calculated using the cash basis or the utility basis, and the rate which the protested rate supersedes was not based on the same methodology, the commission may calculate cost of service using the superseded methodology unless the seller establishes a reasonable basis for the change in methodologies. Where the protested rate is based in part upon a change in methodologies the seller must show during the evidentiary hearing the calculation of revenue requirements using both the methodology upon which the protested rate is based, and the superseded methodology. When computing revenue requirements using a new methodology, the commission may allow adjustments for past payments.

§24.317. Burden of Proof.

The petitioner shall have the burden of proof in the evidentiary proceedings to determine if the protested rate is adverse to the public interest. The seller of water or sewer service (whether the petitioner or not) shall have the burden of proof in evidentiary proceedings on determination of cost of service.

§24.319. Commission Order to Discourage Succession of Rate Disputes.

(a) If the commission finds the protested rate adversely affects the public interest and sets rates on a cost of service basis, then the commission shall add the following provisions to its order:

(1) If the purchaser files a new petition or appeal, and the commission forwards the petition or appeal to the State Office of Administrative Hearings pursuant to §24.307 of this title (relating to Commission's Review of Petition or Appeal), then the administrative law judge shall set an interim rate immediately. The interim rate shall equal the rate set by the commission in this proceeding where the commission granted the petition or appeal and set a cost of service rate.

(2) The commission shall determine in the proceedings pursuant to the new petition or appeal that the protested rate adversely affects the public interest. The administrative law judge shall not hold an evidentiary hearing on public interest but rather shall proceed with the evidentiary hearing to determine a rate consistent with the ratemaking mandates of the TWC, Chapters 12 and 13.

(b) The effective period for the provisions issued pursuant to subsection (a) of this section shall expire upon the earlier of three years after the end of the test year period, or upon the seller and purchaser entering into a new written agreement for the sale of water or sewer service which supersedes the agreement which was the subject of the proceeding where the commission granted the petition or appeal and set a cost of service rate. The provisions shall be effective in proceedings pursuant to a new petition or appeal if the petition or appeal is filed before the date of expiration.

(c) For purposes of subsection (b) of this section, the "test year period" is the test year used by the commission in the proceeding where the commission granted the petition or appeal and set rates on a cost of service basis.

§24.321. Filing of Rate Data.

(a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission may require each provider of water or sewer service for resale to report the retail and wholesale rates it charges to purchasers.

(b) Within 30 days after receiving a written request from the commission, a provider of water or sewer service for resale shall file a report with the commission. The report must provide the information prescribed in a form prepared by the commission.

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

Filed with the Office of the Secretary of State on July 26, 2018.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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SUBCHAPTER K. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §§24.351, 24.353, 24.355, 24.357, 24.359, 24.361, 24.363

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.351. Enforcement Action

If the commission has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the commission shall immediately:

(1) notify the utility's representative; and

(2) initiate enforcement action consistent with:

(A) this subchapter; and

(B) procedural rules adopted by the commission.

§24.353. Supervision of Certain Utilities.

(a) The commission may place a utility under supervision where:

(1) the utility has exhibited gross or continuing mismanagement; or

(2) the utility has exhibited gross or continuing noncompliance with Chapter 13 of the TWC or commission rules; or

(3) the utility has exhibited noncompliance with commission orders; and

(4) notice has been provided to the utility advising the utility of the proposed commission action, the reasons for the action and giving the utility an opportunity to request a hearing.

(b) The commission may require the utility to abide by conditions and requirements, including but not limited to:

(1) management requirements;

(2) additional reporting requirements;

(3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets;

(4) a requirement that the utility place all or part of the utility's funds and revenues into an account in a financial institution approved by the commission and restricting use of funds in that account to reasonable and necessary expenses;

(5) operational requirements;

(6) priority order of payments or obligations; and,

(7) limitation of payment for owner's or owner's family member's expenses or salaries or payments to affiliates.

(c) Any utility under supervision may be required to obtain the approval of the commission before taking any action that may be restricted under subsection (b) of this section. If the commission in its order has required prior approval, any action or transaction which occurs without that approval may be voided.

§24.355. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.

(a) After providing a utility with notice and an opportunity for a hearing, the commission may appoint a willing person, municipality,

or political subdivision to temporarily manage and/or 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 TWC §13.412 for:

(A) having expressed an intent to abandon or abandoned operation of its facilities;

(B) having violated a final order of the commission;

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission; or

(D) having violated a final judgment issued by a district court in a suit brought by the attorney general under:

(i) Chapter 13, Texas Water Code;

(ii) Chapter 7, Texas Water Code; or

(iii) Chapter 341, Texas Health and Safety Code.

(b) Appointment under this section may be by emergency order under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities). A corporation may be appointed as 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 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.

§24.357. Operation of a Utility by a Temporary Manager.

(a) By emergency order under TWC §13.4132, the commission may appoint a person, municipality, or political subdivision under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities) to temporarily manage and/or operate a utility that has discontinued or abandoned operations or the provision of service, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC §13.412.

(b) A person, municipality, or political subdivision 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 service 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, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the commission staff 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.

(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 may be approved by the commission.

(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 commission 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 commission.

(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.

§24.359. Fines and Penalties.

(a) Fines and penalties collected under TWC, Chapter 13, from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

(b) The commission shall provide a reasonable period for a retail public utility that takes over a nonfunctioning system to bring the nonfunctioning system into compliance with commission rules, during which the commission may not impose a penalty for any deficiency in the system that is present at the time the retail public utility takes over the nonfunctioning system. The commission must consult with the retail public utility before determining the period and may grant an extension of the period for good cause.

§24.361. Municipal Rates for Certain Recreational Vehicle Parks.

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

(1) Nonsubmetered master metered utility service--Potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.

(2) Recreational vehicle--Includes a:

(A) house trailer as that term is defined by Texas Transportation Code, §501.002; and

(B) towable recreational vehicle as that term is defined by Texas Transportation Code, §541.201.

(3) Recreational vehicle park--A commercial property on which service connections are made for recreational vehicle transient guest use and for which fees are paid at intervals of one day or longer.

(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park shall determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses, including hotels and motels, that serve transient customers and receive nonsubmetered master metered utility service from the utility.

(c) Notwithstanding any other provision of this chapter, the commission has jurisdiction to enforce this section.

§24.363. Temporary Rates for Services Provided for a Nonfunctioning System.

(a) Notwithstanding other provisions of this chapter, upon sending written notice to the commission, a retail public utility other than a municipally owned utility or a water and sewer utility subject to the original rate jurisdiction of a municipality that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider may immediately begin charging the customers of the nonfunctioning system a temporary rate to recover the reasonable costs incurred for interconnection or other costs incurred in making services available and any other reasonable costs incurred to bring the nonfunctioning system into compliance with commission rules.

(b) Notice of the temporary rate must be provided to the customers of the nonfunctioning system no later than the first bill which includes the temporary rates.

(c) Within 90 days of receiving notice of the temporary rate increase, the commission will issue an order regarding the reasonableness of the temporary rates. In making the determination, the commission will consider information submitted by the retail public utility taking over the provision of service, the customers of the nonfunctioning system, or any other affected person.

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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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SUBCHAPTER L. PROVISIONS REGARDING MUNICIPALITIES

16 TAC §§24.375, 24.377, 24.379, 24.381

The new subchapter and sections are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

§24.375. Jurisdiction of Municipality: Surrender of Jurisdiction.

(a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(b) The commission shall post on its website a list of municipalities that surrendered original jurisdiction to the commission.

§24.377. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.

The commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. These rules include Subchapters F and G of this chapter (relating to Customer Service and Protection and Quality of Service).

§24.379. Notification Regarding Use of Revenue.

At least annually, and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure, not water or sewer related, funded in whole or in part by customer revenue.

§24.381. Fair Wholesale Rates for Wholesale Water Sales to a District.

(a) A municipality that makes a wholesale sale of water to a special district created under §52, Article III, or §59, Article XVI,

Texas Constitution, and that operates under Title 4 (General Law Districts), or under Chapter 36 (Groundwater Conservation Districts) shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.

(b) This section does not apply to a sale of water under a contract executed before September 1, 1997.

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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Adriana Gonzales
Rules Coordinator
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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.56

The Texas Alcoholic Beverage Commission proposes amendments to Rule §41.56, Out-of-State Winery Direct Shipper's Permits.

Rule §41.56 sets forth requirements for reporting and payment of excise taxes by holders of Out-of-State Winery Direct Shipper's Permits under chapter 54 of the Alcoholic Beverage Code.

Proposed amendments to §41.56 would clarify the information required in the Direct Shipper's Report, require certain information to be attached to the report, and modify the reporting dates for the two categories of shippers (i.e., those who shipped 4,000 or more gallons of wine to customers in Texas during the previous calendar year, and those who shipped less than that amount).

The proposed amendments also would clarify in the rule existing requirements in Alcoholic Beverage Code §54.05. That code section requires that a packages be clearly labeled to show that it contains wine and that the package may only be delivered to a person who is age 21 or over. The shipping requirements in new subsection (i) of the rule would require the shipper to notify the carrier that the shipment contains alcoholic beverages and that an adult signature is required at delivery. The proposed rule amendments would also clarify that permit holders who use a fulfillment center or similar service to fulfill an order must require that center or service to provide the required notice to the carrier on behalf of the permit holder.

Proposed new subsection (j) provides notice that the Winery Direct Shipper's Permit is subject to cancellation or suspension if any of the requirements in rule §41.56 are not met, whether by the permit holder or by a fulfillment center or similar service used to fill the winery's orders. This notice is consistent with Alcoholic Beverage Code §11.61(b)(2).

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on rural communities. The effect of the proposed reporting requirements on micro-businesses, small businesses, and persons regulated by the commission will be minimal. The proposed requirements are similar to requirements in other states, so invoices for an out-of-state winery shipping wine to other states are likely to already contain the information required by this proposal. The commission needs to get the requested information on a timely basis in order to verify that the correct amount of taxes are being paid and to timely enforce the requirements designed to assure that packages containing alcoholic beverages are not being delivered to minors in Texas by out-of-state wineries. Under the proposal, wineries shipping more than 4,000 gallons annually to Texas customers will be required to submit monthly reports instead of the current quarterly reports. Although the same need for timelier reporting applies to smaller businesses, wineries shipping less than 4,000 gallons annually to Texas customers will be required to submit quarterly reports (and not monthly reports) instead of the current annual reports. Since the proposed new shipping requirements related to minimizing the likelihood that deliveries of alcoholic beverages to minors are merely clarifying existing statutory requirements, they do not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission.

Mr. Smith has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because more frequent reporting will increase the likelihood that the state receives all taxes due on alcoholic beverages shipped into the state by out-of-state wineries. In addition, clarifying the existing shipping requirements relating to preventing delivery of alcoholic beverages to minors will benefit the public's health and safety.

This paragraph constitutes the commission's government growth impact statement for the proposed amendments. The analysis addresses the first five years the proposed amendments would be in effect. The proposed amendments neither create nor eliminate a government program. The proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amendments requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed amendments do not increase or decrease fees paid to the agency. The proposed amendments create a new regulation, as that term is defined in 34 TAC §11.1(a)(1), with reference to 34 TAC §11.1(a)(2)(B). The proposed amendments expand an existing regulation. The proposed amendments neither increase nor decrease the number of individuals subject to the rule's applicability. The proposed amendments are not expected to have a direct effect on the state's economy, either positively or adversely.

Comments on the proposed amendments may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to *rules@tabc.texas.gov.* Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, Au-

gust 23, 2018, at 1:30 p.m. in the commission meeting room on the first floor of the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code; §54.06(c), which provides that the agency shall establish rules requiring the holder of an out-of-state winery direct shipper's permit to periodically file reports giving the commission such information as the commission determines is necessary to more efficiently and effectively enforce applicable state laws; and §54.11, which requires the commission to adopt rules necessary to implement chapter 54 of the Alcoholic Beverage Code.

The proposed amendments affect §5.31 and chapter 54 of the Alcoholic Beverage Code.

§41.56. Out-Of-State Winery Direct Shipper's Permits.

(a) This rule relates to Chapter 54 of the Alcoholic Beverage Code.

(b) Each holder of an out-of-state winery direct shipper's permit shall make reports (Direct Shipper's Report) to the commission on forms prescribed by the executive director or executive director's designee [~~administrator~~].

(c) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the end of the reporting period for which the report is made and shall show:

(1) the reporting period and year for which the report is made, the permit number and the name and address of the winery; and

(2) the invoice date, invoice number, customer name, city, total wine gallons per invoice, and carrier name and tracking number [~~making delivery~~] for each sale and delivery.

(d) The permittee shall attach to the Direct Shipper's Report either:

(1) copies of invoices showing:

(A) the names and addresses of the individuals to whom the alcoholic beverages were shipped;

(B) the brands of products shipped and the quantities of each brand;

(C) the prices charged for each brand;

(D) the licensed common carrier used to deliver the alcoholic beverages; and

(E) the licensed common carrier tracking number used to identify each shipment; or

(2) a list containing the information described in paragraph (1) of this subsection.

(e) [~~(d)~~] Holders of out-of-state winery direct shipper's permits must pay the excise tax on the total gallons of wine shipped into the state, not later than the 15th day of the month following the reporting period the wine was shipped into the state. Remittance of the tax due on wine, less 2.0% of the amount due when submitted within the required time, shall accompany the report hereinbefore provided and shall be made by check, United States money order, or other acceptable methods of payment payable to the Texas Alcoholic Beverage Commission.

(f) [~~(e)~~] As long as an out-of-state winery direct shipper's permit remains active, the reports [~~report~~] required herein must be filed even though no sales or shipments have been made.

(g) [~~(f)~~] Holders of out-of-state winery direct shipper's permits that shipped 4,000 gallons annually or more to consumers in Texas during the previous calendar year, must file a monthly [~~quarterly~~] report. [~~Quarterly Reporting Periods: January 1, through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.~~]

(h) [~~(g)~~] Holders of out-of-state winery direct shipper's permits that shipped less than 4,000 gallons annually to consumers in Texas during the previous calendar year, must [~~may~~] file a quarterly [~~yearly~~] report. Quarterly Reporting Periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. [~~Yearly Reporting Period: January 1 through December 31.~~]

(i) Shipping requirements.

(1) Holders of out-of-state winery direct shipper's permits shall require adult signature upon delivery and shall notify the carrier that the shipment contains alcoholic beverages.

(2) Holders of out-of-state winery direct shipper's permits utilizing a fulfillment center or similar service to fulfill an order shall ensure that the fulfillment center or service requires adult signature upon delivery and notifies the carrier that a shipment contains alcoholic beverages.

(j) Failure to comply with the requirements of this section, including failure to ensure that a fulfillment center or similar service requires adult signature upon delivery and notifies the carrier that a shipment contains alcoholic beverages, is cause for cancellation or suspension of the direct shipper's 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.

Filed with the Office of the Secretary of State on July 24, 2018.

TRD-201803174
Clark Smith
General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 9, 2018
For further information, please call: (512) 206-3230

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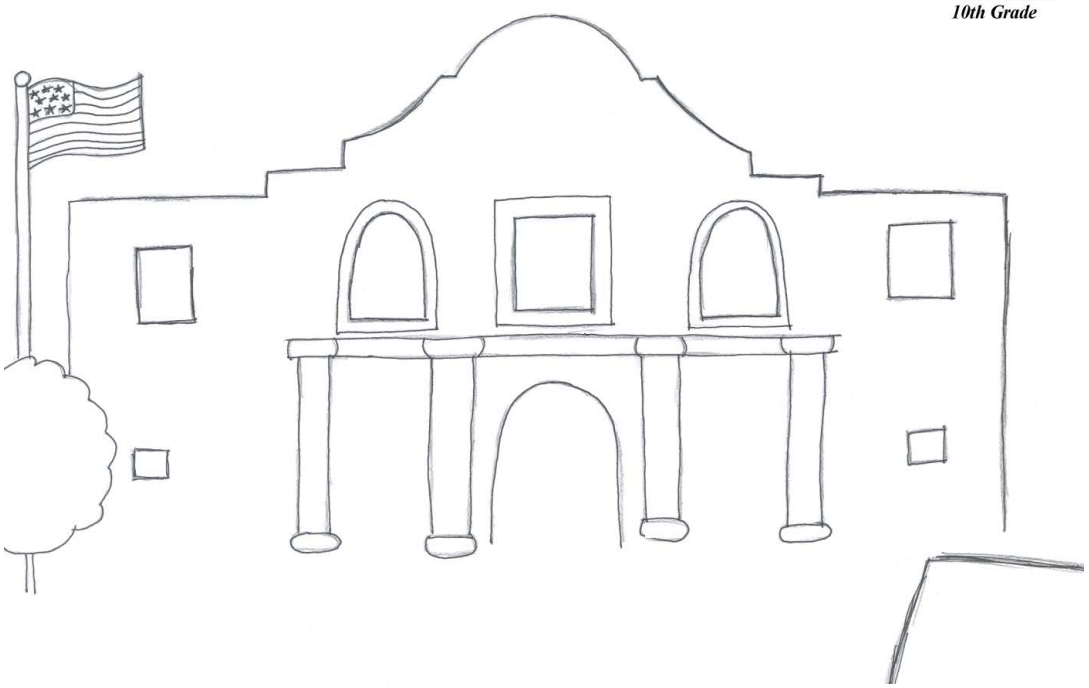
10th Grade



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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE SUBCHAPTER E. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

13 TAC §26.25

The Texas Historical Commission adopts the repeal of §26.25, concerning Memorandum of Understanding with Texas Department of Transportation. Concurrently with this posting, an adopted replacement to §26.25 is posted in another section of the *Texas Register.* The repeal of §26.25 is adopted without changes to the proposed text published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3179). This repeal and the adopted replacement have been agreed upon by both the Texas Historical Commission (THC) and the Texas Department of Transportation (TxDOT) in order to update the current Memorandum of Understanding (MOU).

This repeal and the accompanying replacement are adopted to better explain both agencies' responsibilities. The changes include several administrative adjustments, including reorganization of the agreement. The adopted replacement also offers clarification of project activities relating to non-archeological historic properties, the addition of new definitions relating to archeological and non-archeological properties, and the addition of text relating to programmatic public outreach activities.

No comments were received regarding adoption of the rule replacement and the new rule.

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

The repeal is adopted under §191.052 of the Texas Natural Resources Code, which provides the THC with authority to promulgate rules to reasonably affect the purposes of Chapter 191.

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 27, 2018.

TRD-201803256

Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: August 16, 2018
Proposal publication date: May 18, 2018
For further information, please call: (512) 463-8882

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13 TAC §26.25

The Texas Historical Commission (hereafter referred to as the commission) adopts new §26.25 in Title 13, Part II, Subchapter E, Chapter 26 of the Texas Administrative Code (relating to Memorandum of Understanding with Texas Department of Transportation) to replace the current §26.25. The new §26.25 is adopted with changes to the proposed text published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3179) and will be republished. Concurrently with this posting, an adopted repeal of the current §26.25 is posted in another section of the *Texas Register.* The repeal and this adopted replacement have been agreed upon by both the Texas Historical Commission (THC) and the Texas Department of Transportation (TxDOT) in order to update the current Memorandum of Understanding (MOU).

This replacement is adopted to better explain both agencies' responsibilities. The changes include several administrative adjustments, including reorganization of the agreement. The adopted replacement also offers clarification of project activities relating to non-archeological historic properties, the addition of new definitions relating to archeological and non-archeological properties, and the addition of text relating to programmatic public outreach activities.

No comments were received regarding adoption of the new rule.

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

The new rule is adopted under §191.052 of the Texas Natural Resources Code, which provides the THC with authority to promulgate rules to reasonably affect the purposes of Chapter 191.

§26.25. Memorandum of Understanding with Texas Department of Transportation.

(a) Purpose and Authority. This section contains the memorandum of understanding (MOU) entered into by the Texas Historical Commission (THC) and the Texas Department of Transportation (TxDOT) in accordance with Texas Government Code, §442.005 and §442.007; Texas Natural Resources Code, §191.0525(f); and Transportation Code, §201.607. The purpose of this MOU is to provide a formal mechanism for expediting THC review of TxDOT's transportation projects that potentially pose adverse effects on cultural resources. This MOU supersedes the previous MOU made effective on May 20, 2013.

(b) Applicability.

(1) Except as provided in paragraph (2) of this subsection, this section generally applies to:

(A) a transportation project for which an environmental review is being or will be performed under 43 TAC Chapter 2 (relating to Environmental Review of Transportation Projects); or

(B) any other type of project coordinated by TxDOT in compliance with the requirements of this section.

(2) Work in TxDOT right-of-way that is not associated with a project for which TxDOT is the project sponsor under 43 TAC §2.7 (relating to Texas Department of Transportation, Environmental Review of Transportation Projects, General Provisions) is the responsibility of the project sponsor and not of TxDOT (see Texas Natural Resources Code §191.0525). The project sponsor is responsible for coordinating directly with THC for such work. Examples of projects that will be coordinated by the non-TxDOT project sponsor directly with THC include but are not limited to:

(A) on-system highway projects funded entirely with local funds;

(B) utility relocations or installations within TxDOT right-of-way sponsored by other entities; and

(C) driveway and access connections sponsored by other entities.

(3) TxDOT transportation projects may be coordinated with THC outside the terms of this MOU with notification of THC.

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

(1) Antiquities permit--A permit issued by THC in order to regulate the taking, alteration, damage, exhumation, destruction, salvage, archeological survey, testing, excavation and study of State Antiquities Landmarks including prehistoric, historic and underwater archeological sites, and the preservation, rehabilitation, restoration, reconstruction, architectural investigation, hazard abatement, relocation, demolition, or new construction related to historic structures and buildings designated as a State Antiquities Landmark).

(2) Area of potential effects (APE)--The geographic space or spaces within which a project may cause changes in the character or use of historic properties, if any such properties exist.

(A) The area of potential effects for archeological properties will be confined to the limits of the proposed project right of way (including permanent and temporary easements), utility relocations designated by TxDOT, and project-specific locations designated by TxDOT. The area of potential effects also extends to the depth of impacts caused by the undertaking.

(B) The area of potential effects for non-archeological historic properties will be confined to the limits of the proposed project right of way (including permanent and temporary easements), utility relocations designated by TxDOT, and project-specific locations designated by TxDOT.

(3) Cultural resources--A general term referring to cemeteries; buildings; structures; objects; archeological sites, including shipwrecks; and districts more than 50 years of age with the potential to have significance in local, state, or national history.

(4) Effect--Alteration to the characteristics of a historic property qualifying it for formal designation as a State Antiquities Landmark.

(5) Eligibility--A property's eligibility for designation as a State Antiquities Landmark, as set forth in this chapter.

(6) Emergency Permit--A permit that may be used by TxDOT under certain emergency circumstances for the purposes of performing investigations prior to formal application for an antiquities permit.

(7) Historic property--Any prehistoric or historic district, site, building, structure, or object that meets the requirements for designation as a State Antiquities Landmark as set forth in this chapter.

(8) Minor widening--Roadway projects resulting in pavement profile widened to less than double their original width, resulting from adding travel/center-turn lanes or paved shoulders.

(9) Project-specific location--The location of specific material sources (e.g., base material, borrow and sand pits) and other sites used by a construction contractor for a specific project.

(10) State Antiquities Landmarks (SAL)--Both Archeological and Non-archeological historic properties that are designated as landmarks as defined in Subchapter D of the Antiquities Code of Texas (Texas Natural Resources Code, Chapter 191), or treated as landmarks under the interim protection described in §26.8(d) of this title (relating to Designation Procedures for Publicly Owned Landmarks), and identified in accordance with this chapter.

(11) THC--Texas Historical Commission.

(12) Transportation project--A project to construct, maintain or improve a highway, rest area, toll facility, aviation facility, public transportation facility, rail facility, ferry, or ferry landing. A transportation enhancement project funded under 23 USC 133(h) is also a transportation project.

(13) TxDOT--Texas Department of Transportation.

(d) Coordination Responsibilities.

(1) TxDOT. The coordination responsibilities of TxDOT under this MOU are defined as follows.

(A) All coordination required by this MOU shall be conducted by or through TxDOT's Environmental Affairs Division or its successor as established by TxDOT administration, unless the Environmental Affairs Division (or its successor) and THC agree in writing to allow other appropriate organizational units of TxDOT or other entities approved by the respective agencies to conduct the coordination.

(B) TxDOT shall not be a signatory to any permit issued by THC to another entity for work on a project funded or sponsored by such other entity.

(2) THC. The coordination responsibilities of THC under this MOU are to conduct any review required by this section in an efficient manner, to provide timely feedback to TxDOT about projects coordinated under this section, and to apply any funding provided by TxDOT solely to the review of TxDOT's projects in a manner that most efficiently streamlines THC's effective review and early coordination.

(e) Qualifications of Staff and Use of Consultants.

(1) All cultural resource investigations executed under the terms of this MOU shall be implemented by staff who meet the requirements for Professional personnel as designed and set forth in this chapter; or the Secretary of the Interior's Professional Qualification Standards 36 C.F.R Part 61, Appendix 6) and qualified and eligible to receive an Antiquities Permit..

(2) TxDOT has the right to perform cultural resource investigations using staff or consultants who meet the professional standards cited in paragraph (1) of this subsection.

(3) Cultural resource surveys, investigations, permit applications, and other work performed by consultants shall be coordinated with THC by or through TxDOT's Environmental Affairs Division, or its successor as established by TxDOT administration, unless it and THC agree in writing to allow other appropriate organizational units of TxDOT or other entities approved by the respective agencies to coordinate the work.

(f) Projects Excluded from Review for Archeological Sites and Cemeteries.

(1) Projects with ground disturbance of less than 100 cubic yards of impacts to undisturbed sediments, by their nature and definition, do not have the potential to affect historic properties. Such projects do not require review of their potential project impacts on archeological resources or cemeteries by THC under this chapter or under this MOU. The following list provides examples of activities with this low level of new disturbance that do not require review of their potential impacts on archeological resources or cemeteries under this chapter or under this MOU:

(A) installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;

(B) projects involving purchase or acquisition of land without associated ground-disturbing activities;

(C) routine structural maintenance and repair of bridges, highways, railroad crossings, picnic areas, and rest areas;

(D) in-kind repair, replacement of lighting, signals, curbs and gutters, and sidewalks;

(E) crack seal, overlay, milling, grooving, resurfacing, and restriping;

(F) replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts;

(G) intersection improvements, including repair or replacement of overpasses, that require less than 0.5 acres of additional right of way at each intersection;

(H) placement of riprap to prevent erosion of waterway banks and bridge piers provided no ground disturbance is required;

(I) all maintenance work between a highway and an adjacent frontage road;

(J) installation of noise barriers or alterations to existing publicly owned buildings less than 50 years old, to provide for noise reduction except in potential or listed National Register districts;

(K) driveway and street connections;

(L) all work within interchanges and within medians of divided highways;

(M) all work between the flowlines of the ditches and channels and above the original line and grade;

(N) ditch and channel maintenance, provided removal of fill is above the original line and grade;

(O) repairs needed as a result of an event, natural or man-made, which causes damage to a designated state highway, resulting in an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce;

(P) the installation and modification of sidewalks (including the addition of American with Disabilities Act (ADA) ramps) except:

(i) sidewalk installations where the depth of impact exceeds one foot;

(ii) sidewalk and ADA ramp projects within the historic districts in the following cities or towns: Goliad, Rio Grande City, Roma, San Antonio, San Elizario, and San Ygnacio; and

(iii) sidewalk or ADA ramp projects within the limits of the following cities or towns: Anahuac, Nacogdoches, San Patricio, and Socorro;

(Q) routine maintenance projects;

(R) vegetation control

(S) traffic control; and/or

(T) routine painting and striping.

(2) Design changes for projects that have completed all applicable review and consultation where the new activities would have less than 100 cubic yards of impacts to undisturbed sediments do not require additional review or coordination. or

(3) Projects that are exempt from project-specific review for compliance with this chapter and review under this MOU, as specified in paragraphs (1) and (2) of this subsection, are also exempt from compliance with other THC rules regarding project-specific investigations or coordination for potential impacts to cemeteries promulgated under Texas Health and Safety Code, §711.012(c), unless one of the following two conditions is present:

(A) pavement would be extended to within 15 feet of the boundary of a known cemetery founded earlier than 1955; or

(B) a project element would directly affect known burials.

(g) Procedures for Project Coordination when the Project Requires Review for Archeological Sites and Cemeteries.

(1) For projects subject to review for archeological sites and cemeteries under this MOU, TxDOT will evaluate the APE for potential project effects to archeological historic properties and to determine whether the APE contains cemeteries. TxDOT must make reasonable efforts and act in good faith when complying with this requirement.

(2) TxDOT may approve projects to proceed to construction without review by THC when TxDOT staff finds that the project will not affect archeological historic properties and the project APE will not contain cemeteries.

(3) TxDOT will submit projects to THC for review when TxDOT staff finds the project may affect archeological historic properties or the project APE contains cemeteries. TxDOT may, at its discretion, submit projects for THC review in cases where TxDOT staff finds that the project will not affect archeological historic properties, and the project APE does not contain cemeteries.

(4) In cases where TxDOT seeks comment from THC on proposed identification and/or evaluation methods, TxDOT will recommend one or more methods.

(5) In its request for review TxDOT will make one or more of the following findings, determinations, and recommendations:

(A) In cases where no archeological sites or cemeteries occur or are likely to occur in some or all of the APE, TxDOT will propose a finding of no effect in those portions of the APE and recommend that the project proceed to construction in those portions.

(B) In cases where an archeological site occurs within the APE but the portion of the site within the APE does not have characteristics that qualify it as an archeological historic property or is not likely to have such characteristics, TxDOT will propose a determination that the portion of the site in the APE is not an archeological historic property, find that the project will have no effect on archeological historic properties at the site location, and recommend that the project proceed to construction at the location of the site.

(C) In cases where the portion of a site within the APE has characteristics that qualify it as an archeological historic property, TxDOT will propose a determination that an archeological historic property occurs within the APE.

(D) In cases where the APE contains an archeological historic property or cemetery, TxDOT will either propose a finding that the project will have no adverse effect on the site or propose a finding that the project will have an adverse effect on the site.

(E) If a project will have an adverse effect on an archeological historic property or cemetery within the APE, TxDOT will also recommend to THC an appropriate means by which to resolve the adverse effect.

(i) The resolution of adverse effects may take one of the following forms:

(I) the avoidance of the site during construction;

(II) an alternative mitigation strategy, such as the preservation of a comparable site or the re-analysis of an existing collection;

(III) data recovery excavation or exhumation; or

(IV) another form of resolution approved by THC.

(ii) In cases where data recovery is the selected means for resolving adverse effects, TxDOT will coordinate with THC at several stages during the data recovery process according to the following procedures, unless TxDOT and THC agree in writing to different procedures:

(I) TxDOT will submit an initial data recovery plan as part of a permit application for data recovery to THC for review.

(II) TxDOT will submit a brief report, documenting whether the fieldwork met the terms of the initial data recovery plan and justifying any deviation, to THC for review. When appropriate, TxDOT will recommend that the project be approved to proceed to construction and destruction of any remaining portion of the site within the APE.

(III) TxDOT will submit a revised data recovery plan, based on a preliminary review of field data and recovered materials, to THC for review. When appropriate, TxDOT will recommend that the revised plan be adopted for the completion of data recovery analysis and reporting.

(IV) TxDOT will submit a draft data recovery report to THC for review. When appropriate, TxDOT will recommend that the report be accepted in partial satisfaction of the terms of the permit and in satisfaction of TxDOT's obligations for resolving the adverse effects of the project on the site.

(V) TxDOT will ensure that data recovery investigations do not begin before the State of Texas' legal right to ownership of the artifacts to be recovered has been secured.

(F) THC will respond within 20 calendar days of receipt of the TxDOT request for review, in accordance with and pursuant to the terms and conditions set out by an interagency contract executed by THC and TxDOT. This final response will include:

(i) a statement of concurrence or nonconcurrence with TxDOT's findings and recommendations;

(ii) a determination of site eligibility for all evaluated sites; and

(iii) any other comments relevant to the archeological sites or cemeteries which could be affected by the project.

(6) If THC does not respond within 20 calendar days, TxDOT may assume that THC concurs with TxDOT's findings, determinations, and recommendations and may proceed in accordance with the procedures required in this MOU.

(h) Background Studies for Archeological Sites and Cemeteries.

(1) For projects subject to review for archeological sites and cemeteries under this MOU, based on the results of background research, TxDOT will identify projects or portions of projects' APEs that require archeological field investigation.

(2) Eligibility determinations that TxDOT performs under this MOU will not require field investigations if sufficient background information exists to demonstrate that the portion of the site to be affected does not have potential research value.

(3) Determinations that TxDOT makes under this MOU regarding the presence of cemeteries in project APEs may be made through the use of maps, project-area photographs, or other background research.

(i) Permits for Archeological Sites and Cemeteries. THC shall issue antiquities permits for reconnaissance survey, intensive survey, monitoring, eligibility testing, exhumations, and emergencies to archeological staff at TxDOT under the following terms:

(1) The archeological staff of TxDOT's Environmental Affairs Division, or its successor as established by TxDOT administration, oversees the work.

(2) The work shall be completed in accordance with the provisions of the MOU.

(3) THC shall not require TxDOT to submit an antiquities permit application.

(4) In lieu of a permit application, TxDOT archeological staff shall notify THC in writing (by email or letter) of:

(A) the principal investigator;

(B) the investigation type and scope of work;

(C) the county in which the project will occur;

(D) the project name or identifier (site trinomial, if applicable); and

(E) the period of time for which the permit is desired.

(5) TxDOT staff may initiate work following notification of THC.

(6) THC shall issue a permit number within five business days of receiving the notification.

(7) TxDOT may revise the type of investigation based on observations made during the conduct of work as long as TxDOT provides to THC notification of the change prior to submission of the report.

(8) TxDOT may determine the appropriate amount of time a Principal Investigator will be in the field for a project based on the complexity of the project. TxDOT Principal Investigators will document their estimated proportion of field time in the corresponding reports of investigations.

(9) When conditions of natural disasters, man-made disasters, or post-review discovery necessitate immediate action, TxDOT may initiate work under an emergency permit without having first requested and received the permit number subject to each of the following conditions:

(A) TxDOT staff shall only conduct work under an emergency permit when archeological deposits are discovered during development or other construction projects or under conditions of natural or man-made disasters that necessitate immediate action to deal with the situation and findings.

(B) TxDOT will provide notification to THC to obtain the permit number within five working days of initiating the work.

(C) All categories of investigations can be authorized under an emergency permit, but an emergency permit will only be issued under emergency conditions where the investigations must be initiated or performed prior to notification under paragraph (4) of this subsection.

(10) THC shall consider the work conducted under the permit completed upon receipt of:

(A) one unbound report;

(B) two tagged pdf format reports on an archival quality CD or DVD, one containing all maps and locational information and one with maps and locational information redacted;

(C) a shape file of the project area subject to investigation; and

(D) a completed abstract form.

(11) The number of defaulted permits accrued by particular TxDOT staff while working for TxDOT shall not affect the issuance of additional permits to other TxDOT staff by THC for TxDOT projects.

(12) The inspection of a project APE or proposed APE for purposes of evaluating the kind of archeological investigation that may be required (scoping) shall not constitute an activity that requires a permit from THC when that activity does not result in a report to be coordinated under the terms of the MOU.

(13) All types of archeological investigations conducted by TxDOT but not covered by this section shall require submission of an antiquities permit application and adhere to the terms of the permit and this chapter with the exception that any permit issued to TxDOT under this paragraph, including data recovery permits, shall not include a requirement for project-specific outreach to be completed as part of the scope of work. TxDOT shall conduct public outreach at a program level regarding its activities under this MOU as specified in subsection (s).

(j) Surveys for Archeological Sites and Cemeteries.

(1) Surveys may be limited to an evaluation of existing impacts or stratigraphic integrity when these activities are sufficient to determine that any sites present are unlikely to be eligible.

(2) Eligibility determinations made by TxDOT under this MOU will not require further investigation if TxDOT demonstrates that the portion of the site to be affected is not likely to have sufficient integrity to be eligible.

(3) For portions of the APE where deposits may retain sufficient integrity for sites to be eligible, TxDOT survey methods will conform with THC's Archeological Survey Standards, underwater survey standards promulgated in 13 TAC 28 (relating to Historic Shipwrecks), or with other appropriate methods, except as provided in subparagraphs (A) and (B) of this paragraph:

(A) TxDOT reserves the right to depart from published survey standards in cases where it deems appropriate.

(B) THC reserves the right to review non-standard procedures for their adequacy.

(4) Survey methods will be considered adequate for the identification of burials and cemetery boundaries when the portions of the APE within 25 feet of a known cemetery have been investigated and the survey included scraping to a depth adequate to determine whether grave shafts or burials occur in the APE.

(5) A survey to identify burials does not comprise an activity with the potential to cause an adverse effect to a historic property.

(k) Archeological Eligibility Testing Phase.

(1) Each of the following methods will be employed for test excavations:

(A) Mechanical trenches will be excavated and profiles documented in order to characterize the area's potential for archeological deposits with sufficient integrity to be eligible to occur at the site.

(B) The extent of the site within the APE will be sampled through some combination of shovel-testing, column sampling, augering with an auger diameter of not less than 12 inches, surface collection, and geophysical prospection in order to characterize the distribution of archeological materials across the site.

(C) Additional units will be excavated and screened to evaluate site areas that appear to have the best potential for yielding important data with good integrity, based on the results of previous work.

(D) The materials analyzed will comprise those materials most likely to contribute important information about prehistory or history.

(E) TxDOT reserves the right to depart from these methods in cases where it deems appropriate and shall justify deviations in the report.

(F) Testing procedures conducted for underwater archeological investigations shall be coordinated and approved by THC Marine Archeology Program (MAP)

(2) Data from test excavation projects shall be made available to qualified researchers.

(l) Archeological Excavation and Data Recovery.

(1) When appropriate and established in the final research design approved by THC, TxDOT will develop public educational outreach projects for significant data recovery investigations.

(2) Data from data recovery projects shall be made available to qualified researchers.

(3) Research designs for underwater excavation and data recovery shall be reviewed and approved by the THC MAP.

(m) Exhumation.

(1) Exhumation is a form of investigation to resolve the adverse effects of a project on a cemetery.

(2) Exhumation efforts may be staged as a separate phase of work from burial identification. Following procedures set forth in Texas Health and Safety Code, Chapter 711, exhumation may begin once any required notifications of next of kin or other procedures required by Texas Health and Safety Code, Chapter 711 have been conducted.

(3) The following tasks represent a sufficient, reasonable and good faith effort to identify remains and any next of kin associated with burials in unknown or abandoned cemeteries:

(A) making inquiries through the local County Historical Commission;

(B) posting notices with local news outlets; and

(C) posting notices with local churches.

(4) An exhumation project is itself not a type of investigation that requires an outreach effort or curation of materials at a state-certified facility.

(n) Archeological Sites and Cemeteries found after Award of Contract.

(1) When potential historic properties are identified during implementation of a TxDOT project or unanticipated effects on historic properties are determined, work in the immediate area of the discovery shall cease, and TxDOT shall be notified of the discovery; if appropriate, security measures will be initiated to protect the discovery.

(2) TxDOT will notify the THC within 48 hours of the discovery.

(3) For unanticipated discoveries of archeological materials that do not contain human burials, TxDOT will undertake each of the following additional actions:

(A) TxDOT will verify that the discovery does not contain human burials. As necessary, TxDOT will obtain and perform this investigation under an emergency permit or other appropriate Antiquities Permit category.

(B) Upon confirmation that the discovery does not contain human burials, TxDOT may allow construction at the site to proceed.

(C) TxDOT shall complete or update a State of Texas Archeological Site Data Form based on the available information.

(D) TxDOT will find that the property comprises an archeological historic property.

(E) TxDOT will develop a mitigation proposal to resolve the adverse effects of the undertaking on the archeological historic property. This proposal shall not necessarily involve any further excavations at the historic property.

(F) The level of effort described in the proposal shall be commensurate with the nature of the resource, based on the available information.

(G) TxDOT will develop the proposal in coordination with THC and obtain the appropriate Antiquities Permit for this work.

(4) For unanticipated discoveries involving human burials, TxDOT shall follow the applicable requirements of the Health and Safety Code, Title 1, Section 711.

(A) Work may resume in areas outside the boundaries of the cemetery.

(B) Work may resume in a cemetery area if that cemetery has been removed in compliance with the applicable requirements of the Health and Safety Code, Title 1, Section 711.

(o) Standard Treatments for Particular Resource Types. Isolated wells or cisterns unassociated with other remains will be treated as follows:

(1) Isolated wells or cisterns that post-date 1900 A.D. do not warrant notification of THC or additional investigation. Removal or sealing of these features does not constitute an adverse effect.

(2) Isolated wells or cisterns that pre-date 1900 A.D. require research and documentation of their location, construction, condition, and original context. Upon completion of the research and documentation, these features may be backfilled and capped. These activities do not constitute an adverse effect.

(p) Artifact Recovery and Curation.

(1) Artifact recovery.

(A) Artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents that address the research questions must be cleaned, labeled, and processed in preparation for long-term curation unless the artifacts or samples are approved by THC for discard under this chapter and Chapter 29 of this title (relating to Management and Care of Artifacts and Collections).

(B) To ensure proper care and curation, recovery methods must conform to the applicable requirements of this chapter and Chapter 29 of this title.

(C) Artifacts recovered from underwater testing and data recovery projects require conservation as stated in §26.15 of this title and the conservation facility must be included in the permit application and data recovery plan.

(2) Artifact curation.

(A) TxDOT or its permitted contractor may temporarily house artifacts and samples during laboratory analysis and research, but upon completion of the analysis, artifacts and accompanying documentation must be transferred to a permanent curatorial facility in accordance with the terms of the antiquities permit.

(B) Artifacts and samples will be placed at an appropriate artifact curatorial repository which fulfills the applicable requirements of Chapter 29 of this title, as approved by THC. When appropriate, TxDOT will consult with THC to identify for disposal collections or portions of collections that do not have identifiable value for future research or public interpretation. Final approval regarding the disposition of collections will be made by THC.

(C) TxDOT is responsible for the curatorial preparation of all artifacts to be submitted for curation so that they are acceptable to the receiving curatorial repository and fulfill the applicable requirements of this chapter and Chapter 29 of this title, as approved by THC.

(q) Documentation for Archeological Sites and Cemeteries.

(1) Projects subject to review for archeological sites and cemeteries under this MOU will be documented by TxDOT in the manner described in this section. Documentation in the project file for each such project will include, at a minimum:

(A) a description of the project, defining the APE or the investigated portion of the APE in three dimensions;

(B) a project location map, plotting the project location on 7.5' Series USGS quadrangle maps;

(C) information regarding the setting that is relevant for the assessment of the integrity of any archeological sites within the APE;

(D) information on previously-recorded archeological sites in the project location;

(E) description and justification of the level of effort undertaken for the investigation; and

(F) results and recommendations.

(2) All TxDOT survey and testing reports will also include:

(A) description and justification of field methods, including the sampling strategy;

(B) description and quantification of any archeological materials identified;

(C) accurate plotting of any sites found on 7.5' Series USGS quadrangle maps;

(D) submission of electronic TexSite archeological site survey forms to the Texas Archeological Research Laboratory; and

(E) recommendations regarding whether any site merits further investigation.

(r) Quarterly Reports for Archeological Sites and Cemeteries. Reports will be submitted by TxDOT to THC at least once per quarter, within 60 business days after the end of the calendar quarter. The report will list all projects for which TxDOT has documented that no historic properties and cemeteries are present in the project's area of potential effect, and those projects that will have no adverse effects on archeological historic properties and cemeteries.

(s) Public Outreach Regarding Archeological Sites and Cemeteries

(1) TxDOT will conduct programmatic outreach in order to:

(A) broaden understanding of Texas archeology and history and TxDOT's role in studying these topics;

(B) capitalize on partnerships to reach more stakeholders and maximize outreach success;

(C) create opportunities to do outreach using content from many different projects; and

(D) use outreach to establish and maintain a link between TxDOT's public involvement and consultation efforts.

(2) The outreach program will take the following forms:

(A) TxDOT will develop and implement a communications plan;

(B) TxDOT will increase stakeholder outreach by conducting studies of existing and potential audiences, sharing information and opportunities with partners, partnering with other agencies on educational and outreach activities, and participating in conferences and events to raise awareness of TxDOT's work;

(C) TxDOT will create special projects or campaigns to support the goals of the program;

(D) TxDOT will streamline public involvement by working with other internal offices to identify and engage with parties who may wish to engage in consultation on FHWA undertakings under Section 106 of the National Historic Preservation Act; and

(E) TxDOT will monitor the effectiveness of its efforts and make appropriate adjustments to achieve the outreach goals.

(t) Projects Excluded from Review for Non-Archeological Historic Properties.

(1) For the purposes of this subsection, the term historic properties will refer only to non-archeological historic properties.

(2) Based on previous coordination outcomes, TxDOT and THC agree that the following types of routine roadway projects pose limited potential to affect historic properties:

(A) maintenance, repair, installation, or replacement, of transportation-related features, including fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment, non-historic bridges, railroad crossings, lighting, curbs and gutters, safety barriers, ditches, storm drains, non-historic culverts, overpasses, channels, rip rap, and noise barriers;

(B) maintenance and in-kind repair of designated historic bridges, picnic areas, rest areas, roadside parks, and culverts;

(C) maintenance, repair, or replacement of roadway surfacing, including crack seal, overlay, milling, grooving, resurfacing, and restriping;

(D) maintenance, repair, reconfiguration, or correction of roadway geometrics, including intersection improvements and driveway and street connections;

(E) maintenance, repair, installation or modification of pedestrian and cycling-related features, including American with Disabilities Act ramps, trails, sidewalks, and bicycle and pedestrian lanes unless on historic properties protected as SAL, county courthouse, or by preservation easement or covenant.;

(F) maintenance, repair, relocation, addition, or minor widening of roadway, highway, or freeway features, including turn bays, center turn lanes, shoulders, U-turn bays, right turn lanes, travel lanes, interchanges, medians, and ramps;

(G) maintenance, repair, replacement, or relocation of features at crossings of irrigation canals, including bridges, new vehicle crossings, bank reshaping, pipeline and standpipe components, canal conversion to below-grade siphons, and utilities;

(H) repairs needed as a result of an event, natural or man-made, which causes damage to a designated state highway, resulting in an imminent threat to life or property of the traveling public, or which substantially disrupts or may disrupt the orderly flow of traffic and commerce;

(I) design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in paragraph (2) of this subsection; and

(J) other kinds of undertakings jointly agreed to in writing by THC and TxDOT as not requiring review.

(3) For projects described in paragraph (2)(A) - (J) of this subsection, TxDOT qualified professional staff shall determine whether additional evaluation is required due to direct effects to historic properties. If no such evaluation is deemed necessary, such projects are determined to pose no effect on historic properties and do not require review by THC under this chapter or under this MOU.

(4) For review-exempt projects, documentation shall be limited to that maintained in TxDOT's project files. THC may audit TxDOT files for specific projects upon request.

(u) Procedures for Project Coordination when the Project Requires Review for Non-Archeological Historic Properties.

(1) Historic properties. For the purposes of this subsection, the term historic properties will refer only to non-archeological historic properties.

(2) Internal Review Projects. For projects subject to review for historic properties under this MOU, TxDOT qualified professional staff shall determine the presence or absence of historic properties in the area of potential effects. Such efforts should focus on the types of historic properties within public rights-of-way and other sensitive areas, including but not limited to historic bridges, historic road corridors, historic roadside parks and rest areas, historic Depression Era masonry culverts, historic districts, historic courthouse squares and other historic commercial zones. Project activities that TxDOT determines will have no effect or no adverse effect on historic properties may be internally reviewed by TxDOT and are approved for construction.

(3) Coordinated Projects. If TxDOT qualified professional staff determines that a project requires individual coordination with THC for a courthouse review, easement review, or antiquities permit or due to a potential adverse effect on historic properties, TxDOT shall submit that project to THC:

(A) THC will respond within 20 calendar days of receipt of TxDOT's request for review, in accordance with the terms set out by an interagency contract adopted by THC and TxDOT, by indicating whether an affected historic property will require a historic structures permit for an SAL, whether THC intends to initiate an SAL nomination for the affected property, or whether additional consultation pursuant to a preservation easement or covenant will be required. If THC does not respond within 20 calendar days, TxDOT may assume THC's concurrence with its determinations, and TXDOT may proceed with the project to construction; and

(B) in accordance with Texas Government Code §442.008 and §17.2 of this title (relating to Review of Work on County Courthouses), TxDOT will notify THC of any work affecting a county courthouse or its surrounding site, up to and including the curb. THC will respond within 20 calendar days of receipt of TxDOT's notification by indicating whether a historic structures permit for an SAL or additional consultation pursuant to a preservation covenant or easement will be required;

(4) Documentation. For projects that are internally reviewed or individually coordinated under paragraphs (2) and (3) of this subsection, TxDOT will comply with the following project documentation requirements:

(A) For projects that are internally reviewed under paragraph (2) of this subsection, TxDOT shall retain all documentation in the project file and will provide documentation to the THC upon request with memos and basic project information submitted through the THC's electronic review and compliance (eTRAC) system or other means as appropriate.

(B) For projects that are individually coordinated under paragraph (3) of this subsection, documentation submitted to THC will include:

(i) project description and scope;

(ii) project location map with delineation of the APE and location of historic properties;

(iii) methodology used to identify historic properties;

(iv) photographic and descriptive information for each identified property;

(v) justification for findings of historic properties, including setting, integrity, and contextual information;

(vi) justification of effects on historic properties, including evaluations, reports, and other information relevant to the findings by TxDOT; and

(vii) a description of efforts to avoid or minimize harm, mitigation, and commitments.

(v) Project File. TxDOT's Environmental Compliance and Oversight System (ECOS) is the project file of record for each project coordinated under this MOU.

(w) Denial of Access. In cases where access to private land for conducting investigations is denied prior to the approval of the environmental review document, TxDOT will make a commitment to complete appropriate investigations once access is obtained, but prior to any construction related impacts.

(x) MOU to Govern TxDOT Procedures. TxDOT satisfies applicable THC requirements if it utilizes the procedures of this MOU in lieu of other applicable THC procedures. In cases where TxDOT is utilizing this MOU in lieu of other THC procedures, TxDOT must follow the requirements of this MOU.

(y) Project-Specific Agreements. Any project-specific agreements reached between TxDOT and THC regarding the evaluation or treatment of project effects shall be honored by both parties and shall supersede the requirements of this MOU. TxDOT and THC may deviate from the terms of the agreement only when both parties concur that the agreement requires revision.

(z) Continuous Improvement Agreement. TxDOT and THC agree to collaborate on improvements to their programs and development of innovative solutions for expedited review procedures. Such mechanisms may include using project outcomes to refine approaches to resource identification, evaluation, treatment methods, programmatic mitigation measures and interagency agreements that facilitate early coordination, and streamlining and expedited review of TxDOT's transportation projects.

(aa) THC Review of TxDOT Project Files. THC may review TxDOT project files for specific undertakings carried out under this MOU. THC may recommend process improvements based on issues identified during the review.

(bb) Dispute Resolution. THC and TxDOT staff will be responsible for attempting to resolve any conflict between THC and TxDOT that results from the implementation of this section before elevating to agency management.

(cc) Review of MOU. This MOU shall be reviewed and updated as provided by law or by agreement between the parties. THC and TxDOT agree to convene every four years to review, update, or extend this agreement.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2018.

TRD-201803257

Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: August 16, 2018
Proposal publication date: May 18, 2018
For further information, please call: (512) 463-8882

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER C. RATE-MAKING APPEALS

16 TAC §24.45, §24.46

The Public Utility Commission of Texas (commission) adopts an amendment to §24.45, relating to rates charged by a municipality to certain special districts, and adds new §24.46, relating to fees charged by a municipality to a public school district. These amendments are made without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2901). The amendments implement House Bill 2369 (HB 2369) enacted by the 85th Texas Legislature, Regular Session, which amended the title of Texas Water Code (TWC) §13.044 and added new TWC §13.0441 to grant the right of appeal to a public school district (district) receiving water service from a municipality when the district is charged a fee that violates TWC §13.088. The bill also added new TWC §13.088, which prohibits a municipally owned utility that provides retail water or sewer utility service to a district from charging the district a fee based on the number of district students or employees in addition to the rates the municipally owned utility charges the district for the service. This amendment and new section are adopted under Project Number 47305.

A public hearing was not requested; therefore, no hearing was held on the proposed changes. Further, no comments were filed regarding the proposed changes.

The amendments are adopted under TWC §13.0441(b), which provides the commission with the authority to hear appeals regarding fees charged by a municipality to a district based on number of students or employees.

Cross reference to statutes: TWC §13.0441(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 July 26, 2018.

TRD-201803246
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: August 15, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 936-7244

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 78. MOLD ASSESSORS AND REMEDIATORS

16 TAC §§78.58, 78.60, 78.62, 78.64, 78.70, 78.74, 78.80, 78.120, 78.130, 78.150

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code, Chapter 78, §§78.58, 78.60, 78.62, 78.64, 78.70, 78.74, 78.80, 78.120, 78.130 and 78.150, regarding the Mold Assessors and Remediators program, without changes to the proposed text as published in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2327). The rules will not be republished.

The adopted rules implement House Bill 4007, 85th Legislature, Regular Session (2017), for the Mold Assessors and Remediators program, which allows the remediation contractor to provide the required photos of the remediation area to the property owner within ten days (formerly seven) after remediation. Additional changes are also made to the records retention policy and to continue to require a mycologist or microbiologist to oversee a mold analysis laboratory. The adopted rules are necessary to implement H.B. 4007 and to clarify and simply existing rules.

The adopted amendment to §78.58 corrects a cross reference.

The adopted amendments to §78.60 remove the requirement for records to be kept at a Texas office. The amendments also correct a cross reference.

The adopted amendments to §78.62 correct the rule to restore the longstanding requirement for oversight of mold analysis activity in all licensed laboratories.

The adopted amendments to §78.64 require applicants for training provider accreditation to identify their designated responsible persons consistent with longstanding practice interpreting §78.10(38) and with the same requirement imposed on licensed entities. The amendments also make editorial corrections.

The adopted amendment to §78.70 removes the requirement for records to be kept at a Texas office and work site locations.

The adopted amendments to §78.74 clarify and simplify the records retention requirements regarding the Mold Assessors and Remediators program. On-site record requirements are removed unmodified and placed in §78.120.

The adopted amendments to §78.80 remove unnecessary redundant language.

The adopted amendments to §78.120 insert unmodified on-site record requirements formerly located in §78.74 and make editorial corrections.

The adopted amendment to §78.130 corrects a cross reference.

The adopted amendment to §78.150 implements H.B. 4007 by increasing the time period during which a licensed mold remediation contractor or company must provide the property owner with required photographs.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rules to persons

internal and external to the agency. The proposed rules were published in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2327). The deadline for public comment was May 21, 2018. The Department received four comments during the 30-day public comment period. The public comments received are summarized below.

Comment--One commenter recommends that the provisions in §78.62(c)(4) regarding qualifications of persons analyzing mold samples should be amended. The commenter suggests that persons analyzing mold samples should be required to have training in mold analysis or have at least three years of experience as a mold microscopist, but should not be required to have both. The commenter compares the qualifications to those in §78.62(c)(5) for the person overseeing mold analysis activity at the laboratory, who is required to have "an advanced academic degree or at least two years of experience in mold analysis."

Department Response--The requirements in §78.62(c)(4) for persons analyzing mold samples have been renumbered but no change has been made to the required qualifications, which include a bachelor's degree in microbiology or biology, training, and experience. The requirements for the qualifications of the mycologist or microbiologist overseeing mold analysis activity likewise are unchanged, but through the amendment are again made applicable to all laboratories seeking a mold analysis license. The Department has not yet clarified the rule to specify that the full-time mycologist or microbiologist must have an advanced academic degree, but this characteristic is commonly required in the industry for persons overseeing mold analysis laboratories. In keeping with industry minimums, the rule may be amended in the future to clarify that the person overseeing mold analysis activity at the laboratory must have both an advanced academic degree and at least two years of experience in mold analysis. The Department did not make any changes to the rules in response to this comment.

Comment--One commenter recommends that the Pan American Aerobiology Certified Spore Analyst Level 1 credential be accepted as proof of competency for persons analyzing mold samples.

Department Response--The Department agrees that the rules provide for the approval of additional mold analysis training programs for persons analyzing mold samples. To date the Department has not received a request to evaluate other programs for equivalency to the training provided by the McCrone Research Institute specified in the rule, and therefore has not made any such determinations. A review of current requirements and practices, and comparability to other training programs, would be necessary to approve other training programs. The Department did not make any changes to the rules in response to this comment.

Comment--One commenter observes that the requirements in §78.62(c)(4) for persons who analyze mold samples exclude industrial hygienists and engineers with bachelor of science degrees who have many years of experience from qualifying to read mold samples and tape lifts, including doing so in the field. The commenter notes that these individuals may read and sign mold sample results in New Mexico and in Mexico, and the rule should be amended to allow them to analyze mold samples in Texas. The commenter suggests that persons analyzing mold samples should be required to fulfill the requirement for a bachelor's degree or have the training and experience currently required, but all three qualifications should not be required.

Department Response--The requirements in §78.62(c)(4) for persons analyzing mold samples have been renumbered but no change has been made to the required qualifications. Therefore, the comments are outside the scope of this rulemaking. However; the Department is aware that the qualifications for various credentials in the mold program are in need of review and possible revision and invites stakeholders to provide input in that effort. The Department did not make any changes to the rules in response to this comment.

Comment--One commenter recommends that the rule regarding personal protective equipment and containment requirements for mold remediation, §78.120, be amended to clarify that the remediation contractor must follow the remediation protocol for projects of less than 25 contiguous square feet.

Department Response--The noted rule sections have been renumbered but changes to the remediation requirements have not been proposed; therefore, the suggested changes are outside of the scope of this rulemaking. However, the Department agrees that the applicability of the rule should be clarified. The mold statute, Occupations Code Chapter 1958, is clear that a license is not required to perform mold remediation when the mold contamination affects a total surface area for the project of less than 25 contiguous square feet. The statute does not specify, however, whether a licensee performing such a remediation may do so without following the requirements of the mold statute and rules, as an unlicensed person could. The "Minimum Area Exemption" FAQ on the Department's mold website explains that licensees are never excused from the applicable requirements of the statute and rules, even when performing a remediation project where the mold contamination affects a total surface area of less than 25 contiguous square feet. At the time the rule was originally written the expectation was that these small projects would rarely be performed by licensees working under the mold rules, such that the rules' remediation requirements would seldom apply to these projects. This has proven to be true. The rule applicability was not changed when the mold program moved from the Department of State Health Services to the Department, but will be clarified by the Department in the future. The Department did not make any changes to the rules in response to this comment.

At its meeting held on July 20, 2018, the Commission adopted the proposed rules without changes as recommended by the Department.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1958, 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 adoption are those set forth in Texas Occupations Code, Chapters 51 and 1958. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 30, 2018.

TRD-201803261

Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 1, 2018
Proposal publication date: April 20, 2018
For further information, please call: (512) 463-8179

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CHAPTER 89. VEHICLE BOOTING AND IMMOBILIZATION

16 TAC §§89.1, 89.10, 89.21 - 89.30, 89.40, 89.45 - 89.48, 89.65 - 89.73, 89.75 - 89.80, 89.90, 89.91, 89.100 - 89.103

The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of existing rules at 16 Texas Administrative Code (TAC), Chapter 89, §§89.1, 89.10, 89.21 - 89.30, 89.40, 89.45 - 89.48, 89.65 - 89.73, 89.75 - 89.80, 89.90, 89.91, 89.100 - 89.103, regarding the Vehicle Booting and Immobilization program, without changes as noticed in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2690).

The adopted repeal implements changes from Senate Bill 1501 and Senate Bill 2065, 85th Legislature, Regular Session (2017), which deregulates vehicle booting at the state level, with a transfer of regulatory authority to municipalities. The adopted repeal is necessary to implement Senate Bill 1501 and Senate Bill 2065.

The adopted repeal of §§89.1, 89.10, 89.21 - 89.30, 89.40, 89.45 - 89.48, 89.65 - 89.73, 89.75 - 89.80, 89.90, 89.91, and 89.100 - 89.103, deregulates vehicle booting at the state level.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed repeal to persons internal and external to the agency. The proposed repeal was published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2690). The Department did not receive any comments during the 30-day public comment period.

The Towing and Storage Advisory Board (Board) met on June 18, 2018, to discuss the proposed repeal. The Board recommended adopting the repeal without changes.

At its meeting on July 20, 2018, the Commission adopted the repeal without changes as recommended by the Board.

The repeal is adopted under Texas Occupations Code, Chapters 51 and 2308, 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 adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the proposal.

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 26, 2018.

TRD-201803203

Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 1, 2018
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For further information, please call: (512) 463-3671

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1002

The Texas Education Agency (TEA) adopts new §97.1002, concerning accountability and performance monitoring. The new section is adopted with changes to the proposed text as published in the June 8, 2018 issue of the *Texas Register* (43 TexReg 3718). The new section adopts in rule an applicable excerpt of the *2018 Accountability Manual.*

REASONED JUSTIFICATION. The TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year.

New 19 TAC §97.1002 adopts an excerpt of the *2018 Accountability Manual* into rule as a figure. The excerpt, Chapter 10 of the *2018 Accountability Manual,* describes the Hurricane Harvey Provision used to evaluate school districts, open-enrollment charter schools, and campuses affected by Hurricane Harvey. The provision provides specific criteria that school districts, open-enrollment charter schools, and campuses must meet in order to receive a *Not Rated* label due to the effects of Hurricane Harvey.

Campuses will be evaluated under the Hurricane Harvey Provision if they meet at least one of the following criteria.

Criterion 1: The campus identified 10 percent or more of enrolled students in either the October snapshot data or in weekly crisis code reports finalized on March 9, 2018, with crisis codes 5A, 5B, or 5C. Campus enrollment is based on October snapshot data.

Explanation: The intent of the crisis codes is to identify a student who (1) was enrolled or was eligible to enroll in a local educational agency (LEA) impacted by Hurricane Harvey and enrolled in a different LEA during the 2017-2018 school year (5A); (2) was enrolled or was eligible to enroll in an LEA impacted by Hurricane Harvey and enrolled in another campus in the same LEA during the 2017-2018 school year (5B); or (3) is identified as homeless because of Hurricane Harvey but has remained enrolled in his or her home campus during the 2017-2018 school year (5C). The crisis code criterion allows for accountability flexibility for those campuses with high numbers of students in one of the three referenced situations. TEA has determined that the academic accountability ratings for a campus that has at least 10 percent of

its students displaced by Hurricane Harvey may not accurately reflect campus performance.

Criterion 2: The campus reported that 10 percent or more of its teachers experienced homelessness due to Hurricane Harvey, as reported in the Homeless Survey announced February 14, 2018.

Explanation: Like crisis code 5C for students, the teacher homeless indicator allows for accountability flexibility for campuses with a substantial number of teachers who were/are homeless due to Hurricane Harvey. TEA has determined that the academic accountability ratings for a campus that has at least 10 percent of its teachers displaced by Hurricane Harvey may not accurately reflect campus performance.

Criterion 3: The campus was reported to TEA as closed for 10 or more instructional days due to Hurricane Harvey.

Explanation: This criterion allows for flexibility for campuses with a substantial number of instructional days lost due to Hurricane Harvey. This provision is like provisions used in 2006 and 2009 for Hurricanes Rita and Ike. TEA has determined that the academic accountability ratings for a campus that was closed for at least 10 days because of Hurricane Harvey may not accurately reflect campus performance.

Criterion 4: The campus was reported to TEA as displaced due to Hurricane Harvey either because the student population was relocated to another geographic location at least through winter break or the student population was required to share its own campus facility with the students of another campus closed as a direct result of Hurricane Harvey at least through winter break.

Explanation: This criterion allows for accountability flexibility for campuses whose facilities were completely or partially damaged to a point where the campus was closed. This also includes campuses that shared facilities with another campus. In many instances, students were forced into classrooms and school hours that were not ideal conditions for teaching and learning to take place. TEA has determined that the academic accountability ratings of campuses whose entire student population was displaced by Hurricane Harvey may not accurately reflect campus performance. TEA has also determined that the academic accountability ratings of campuses that serve students displaced by Hurricane Harvey may not accurately reflect campus performance.

In response to public comment, Figure: 19 TAC §97.1002(a) was modified at adoption to update school district and open-enrollment charter school eligibility for the Hurricane Harvey Provision. The proposed figure stated that school districts and open-enrollment charter schools would be labeled *Not Rated* only if their eligible campuses were labeled *Not Rated.* At adoption, the language was updated to specify that school districts and open-enrollment charter schools are eligible to be labeled *Not Rated* if their campuses are eligible for the Hurricane Harvey Provision. School district and open-enrollment charter school eligibility is dependent on whether their campuses are eligible for the provision, not on whether their campuses are labeled *Not Rated.* As reflected on page 88 of the adopted figure, school districts and open-enrollment charter schools will be evaluated under the Hurricane Harvey Provision if they meet either of the following updated criteria.

Criterion 1: School districts and open-enrollment charter schools are eligible to be labeled *Not Rated* under the Hurricane Harvey Provision if all campuses within the school district or open-enrollment charter school are eligible for the Hurricane Harvey Provision.

Explanation: A school district or open-enrollment charter school should be eligible for the Hurricane Harvey Provision if all the campuses within the school district or open-enrollment charter school are eligible for at least one of the Hurricane Harvey accountability provisions. School district and open-enrollment charter school data is based on the accumulated data of all its campuses. If all those campuses are eligible for the Hurricane Harvey Provision, it is assumed that the school district or open-enrollment charter school would be eligible as well. TEA has determined that the academic accountability ratings of school districts and open-enrollment charter schools with all campuses eligible for the Hurricane Harvey Provision may not accurately reflect school district or open-enrollment charter school performance.

Criterion 2: If 10 percent or more of the school district or open-enrollment charter school's students were reported on the October snapshot as enrolled in a campus eligible for the Hurricane Harvey Provision, the school district or open-enrollment charter school is eligible to be labeled *Not Rated.*

Explanation: This provision allows for accountability flexibility for school districts and open-enrollment charter schools with a substantial portion of students enrolled in campuses eligible for at least one of the allowable Hurricane Harvey provisions. School district and open-enrollment charter school outcomes are largely based on the accumulated outcomes of campuses. It is assumed that, to some degree, the Hurricane Harvey Provision eligible campuses could impact school district or open-enrollment charter school outcomes. TEA has determined it is reasonable for school districts and open-enrollment charter schools to be eligible for the Hurricane Harvey Provision in this situation. TEA has further determined that the academic accountability ratings for a school district or open-enrollment charter school that has at least 10 percent of its students displaced by Hurricane Harvey may not accurately reflect campus performance.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began June 8, 2018, and ended July 9, 2018. A public hearing on the proposed new section was held on June 22, 2018. Following is a summary of the public comments received and the corresponding agency responses.

Comment. La Porte Independent School District (ISD) and the Houston Federation of Teachers (HFT) commented that the Hurricane Harvey Provision does not consider communities affected by and coping with issues stemming from previous hurricanes. HFT commented that these factors may have impacted the validity of self-reported responses to homelessness by students, their families, and teachers. HFT encouraged the Texas Education Agency (TEA) to consider allowing an appeals process or extended time for school districts to triangulate data with other agencies to identify the subset of families that could be probed for further information. Following a request from the commissioner, La Porte ISD included additional quantitative measures that address their district's concerns related to Hurricanes Ike and Harvey.

Agency Response. The agency disagrees. TEA collected, reviewed, and analyzed numerous data regarding the effects of Hurricane Harvey on students, teachers, staff, and facilities to make an appropriate decision about 2018 academic accountability ratings. Data reported through the Texas Student Data Sys-

tem Public Education Information Management System (TSDS PEIMS) and special Hurricane Harvey collections were certified as accurate by the superintendent. Hurricane Harvey provision criteria represent a substantial expansion to storm-related accountability adjustments when compared to prior storms in Texas.

Comment. HFT and one school district staff member expressed concern about the underreporting of storm-damaged communities and questioned the definition of homelessness as one of the self-reported criteria to assess hurricane-related issues affecting schools. The commenters noted that some students stayed in their homes during remediation and that poor home conditions should be considered.

Agency Response. The agency disagrees. Hurricane Harvey Provision criteria represent a substantial expansion to storm-related accountability adjustments when compared to prior storms in Texas. Data reported through TSDS PEIMS and special Hurricane Harvey collections were certified as accurate by the superintendent.

Comment. Two school district staff members and 137 individuals expressed concerns regarding underreporting of displacement due to Hurricane Harvey and requested that TEA expand the provision to exempt all Houston ISD schools from accountability ratings, state sanctions, and interventions for one year, noting that denying schools a waiver because they missed only 9 and not 10 days of instruction shows a lack of compassion and understanding of the facts.

Agency Response. The agency disagrees. TEA collected, reviewed, and analyzed numerous data regarding the effects of Hurricane Harvey on students, teachers, staff, and facilities to make an appropriate decision about 2018 academic accountability ratings.

Comment. The Texas Charter Schools Association (TCSA) and one school district staff member commented that they fully support the state's Hurricane Harvey Provision for affected schools to be eligible for special evaluation in this year's state accountability system. TCSA noted that they appreciate TEA's detailed review of the impact of Hurricane Harvey on all individuals impacted, including the impact on students and teachers in Texas public schools. HFT commented that it agrees with the criterion which states, "The campus was reported to TEA as displaced due to Hurricane Harvey either because the student population was relocated to another geographic location at least through winter break or the student population was required to share its own campus facility with the students of another campus closed as a direct result of Hurricane Harvey at least through winter break."

Agency Response. The agency agrees.

Comment. Klein ISD, one school district staff member, and HFT commented that school districts may be penalized for trying to quickly return to normalcy after Hurricane Harvey. Lamar Consolidated Independent School District (CISD) commented that it was closed for nine instructional days and the tenth day happened to fall on Labor Day; therefore, the district would not meet the proposed criterion. One school district staff member recommended TEA reevaluate the 10-day criterion to include any school district or campus that lost a week or more of instructional days. Klein ISD recommended TEA reevaluate the 10-day criterion to include any school district or campus that missed multiple days due to Hurricane Harvey and its aftermath. HFT noted that such a technicality could have unintended consequences such as basing decisions related to returning to school on rule compliance rather than the needs of the community. HFT suggested that TEA phrase the criterion as an approximate of two weeks of instruction.

Agency Response. The agency disagrees. Hurricane Harvey Provision criteria represent a substantial expansion to storm-related accountability adjustments when compared to prior storms in Texas. The criterion referenced was developed based on loss of instructional days as reported by school districts and open-enrollment charter schools.

Comment. One school district staff member asked if a school district's campuses have to receive a *Not Rated* label for the district to be eligible. The commenter also asked about a situation in which all campuses are eligible but earn a *Met Standard* rating and the school district receives a *D or F*.

Agency Response. The agency provides the following clarification. In response to comments, Figure: 19 TAC §97.1002(a) was updated at adoption to include revised criteria for school districts and open-enrollment charter schools. Specifically, page 88 was modified to read, "School districts and open-enrollment charter schools are eligible to be labeled *Not Rated* under the Hurricane Harvey Provision if all campuses within the school district or open-enrollment charter school are eligible for the Hurricane Harvey Provision. Additionally, if 10 percent or more of the school district or open-enrollment charter school's students were reported on the October snapshot as enrolled in a campus eligible for the Hurricane Harvey Provision, the school district or open-enrollment charter school is eligible to be labeled *Not Rated."*

Comment. Lamar CISD and the Texas School Alliance (TSA) commented that the 10 percent criterion is arbitrary and does not consider the emotional stress experienced by the community and families due to Hurricane Harvey, a school district's size, or marginal differences such as 9.6 percent of students enrolled in a campus labeled *Not Rated.* TSA recommended that school districts, open-enrollment charter schools, and all campuses in the 47 counties identified by the Presidential Disaster Declaration receive a *Not Rated* label due to the widespread damage and trauma.

Agency Response. The agency disagrees. TEA collected, reviewed, and analyzed numerous data regarding the effects of Hurricane Harvey on students, teachers, staff, and facilities to make an appropriate decision about 2018 academic accountability ratings. Hurricane Harvey Provision criteria represent a substantial expansion to storm-related accountability adjustments when compared to prior storms in Texas.

Comment. TSA commented that even though it opposes the use of arbitrary criteria, if TEA requires additional measures (other than being located in one of the 47 counties designated as a disaster area) to determine exclusion from the accountability system, then it agrees with the specific criteria outlined in the proposed rule that school districts, open-enrollment charter schools, and campuses must meet in order to receive a *Not Rated* label.

Agency Response. The agency agrees.

Comment. Lamar CISD commented that while campuses may have met multiple criteria outlined in Figure: 19 TAC §97.1002(a), including 10 percent or more of teachers experiencing homelessness and 10 percent or more of enrolled students identified with a crisis code will likely result in a *Met*

Standard rating for campuses; however, the results will negatively impact the school district rating.

Agency Response. The agency agrees that revised criteria for school districts and open-enrollment charter schools are necessary. At adoption, page 88 of Figure: 19 TAC §97.1002(a) was modified to read, "School districts and open-enrollment charter schools are eligible to be labeled *Not Rated* under the Hurricane Harvey Provision if all campuses within the school district or open-enrollment charter school are eligible for the Hurricane Harvey Provision. Additionally, if 10 percent or more of the school district or open-enrollment charter school's students were reported on the October snapshot as enrolled in a campus eligible for the Hurricane Harvey Provision, the school district or open-enrollment charter school is eligible to be labeled *Not Rated."*

Comment. Lamar CISD commented on the requirement of a campus to be rated *Improvement Required* using all available data in order to be eligible for a *Not Rated* label. The commenter noted that for Hurricanes Katrina, Rita, and Ike, TEA excluded results for displaced students, and the "10 day" rule was used as a final safety for campuses that were closed in case they were rated *Unacceptable* after the exclusions were applied. The commenter provided "Appendix K-Hurricane Ike" from the *2009 Accountability Manual* and "Appendix I-Hurricanes Katrina and Rita" from the *2006 Accountability Manual* as supporting attachments.

Agency Response. The agency disagrees. Hurricane Harvey Provision criteria represent a substantial expansion to storm-related accountability adjustments when compared to prior storms in Texas.

Comment. TSA agreed that the accountability ratings for a campus or a school district that meets at least one of the specific criteria may not accurately reflect school and/or district performance.

Agency Response. The agency agrees.

Comment. TSA agreed that for purposes of counting consecutive years of ratings, 2017 and 2019 will be considered consecutive for school districts, open-enrollment charter schools, and campuses receiving a *Not Rated* label in 2018 due to hurricane-related issues.

Agency Response. The agency agrees.

Comment. TSA agreed that campuses receiving a *Not Rated* label due to the Hurricane Harvey Provision should be excluded from the list of 2019-2020 Public Education Grant (PEG) campuses.

Agency Response. The agency agrees.

Comment. TSA agreed that the accountability ratings for a campus or a school district that meets at least one of the specific criteria may not accurately reflect school and/or district performance.

Agency Response. The agency agrees.

Comment. TSA and two school district staff members commented that the Hurricane Harvey Provision does not address federal accountability. TSA commented that it appears that a campus could be labeled *Not Rated* for 2018 state accountability and excluded from the 2019-2020 PEG list, yet possibly be identified for comprehensive or targeted interventions in 2019. The commenter noted that applying federal sanctions and interventions based on data that "may not accurately reflect school performance" is both unreasonable and unfair and recommended that if a campus receives a *Not Rated* label in the state accountability system due to the Hurricane Harvey Provision, then the campus should also receive a *Not Rated* label in the federal accountability system. One school district staff member commented that there was precedent in applying for state and federal waivers from both Hurricanes Rita and Katrina, and affected schools should be free from sanctions across both state and federal accountability systems.

Agency Response. The agency disagrees. Identification for school improvement is a federal requirement. TEA is unable to waive identification this year or next year with the Hurricane Harvey Provision. The Hurricane Harvey Provision is only applicable to state accountability requirements.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A), which requires the commissioner to evaluate and consider the performance on achievement indicators, including those described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which defines criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(2)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203, 29.081(e), (e-1), and (e-2); and 12.104(b)(2)(L).

§97.1002. Accountability Rating System Provisions Related to Hurricane Harvey.

(a) In addition to the procedures in §97.1001 of this title (relating to Accountability Rating System), school districts, open-enrollment charter schools, and campuses impacted by Hurricane Harvey are

rated for 2018 using additional provisions based upon the specific criteria described in the excerpted section of the *2018 Accountability Manual* provided in this subsection.
Figure: 19 TAC §97.1002(a)

(b) Ratings may be revised as a result of investigative activities by the commissioner of education as authorized under Texas Education Code, §39.057.

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 25, 2018.

TRD-201803188
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 14, 2018
Proposal publication date: June 8, 2018
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §13.31, concerning Purpose and Scope, with changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1562).

The Executive Commissioner of HHSC, on behalf of DSHS, adopts amendments to §13.32, concerning Definitions; §13.33, concerning Criteria for Designating Practice-MUPs; and §13.34, concerning Application Process; new §13.35, concerning Changes in Status of Practice-MUP Designation; §13.51, concerning Purpose and Scope; and §13.52, concerning Data Collection Procedures; and the repeal of §13.61, concerning Medically Underserved Areas and Resident Pharmacists; without changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1562).

BACKGROUND AND JUSTIFICATION

The amendments to §§13.31 - 13.34 update the rules to better conform to current statutory language of the Texas Occupations Code, Chapter 157, reduce unnecessary application requirements for practices seeking designation as practices serving medically underserved populations, and produce improved clarity and organization.

New §13.35 provides a mechanism by which DSHS can verify the continued designation eligibility of designated practices. The previous rules prior to this adoption were ambiguous and did not ensure that DSHS designations were updated biannually. Designated sites and state agencies that rely upon DSHS designations need guidance and assurance that DSHS designations are current.

New §13.51 and §13.52 establish data collection procedures mandated by Texas Health and Safety Code, Chapters 104 and 105. The data collection procedures in the new rules are currently in practice pursuant to the statute.

The repeal of §13.61 removes a rule rendered obsolete by statutory rescission of the Texas Education Code, §61.924.

COMMENTS

The 30-day comment period ended April 16, 2018.

During this period, DSHS received comments regarding the proposed rules from one commenter representing the APRN Alliance. A summary of comments relating to the rules and DSHS's responses follows.

Comment: Regarding proposed §13.31 (Purpose and Scope), the commenter suggested amending proposed §13.31(a) to delete the language "Designated sites will be eligible for qualified advanced practice registered nurses and physician assistants to carry out prescription drug orders in accordance with rules developed by the Texas Board of Nursing and the Texas Medical Board" and replace with the language "Designated practice sites will not be limited by the physician to delegatee ratio in [§]157.0512(c)."

Response: DSHS agrees with the recommended deletion to encourage clarity in rule and better reflect the statute. However, DSHS disagrees with the proposed replacement language as it is redundant of the statute.

Comment: Regarding proposed §13.32 (Definitions), the commenter suggested amending proposed §13.32(5) to reference those practices serving medically underserved populations under Texas Occupations Code, §157.051(11)(A)-(E) but not designated by DSHS under Texas Occupations Code, §157.051(11)(F).

Response: DSHS disagrees with the recommended inclusion of reference to practices serving medically underserved populations that are not designated by DSHS. The more expansive definition proposed by the commenter is outside of the scope of the rule which is limited in implementing Texas Occupations Code, §157.051(11)(F).

ADDITIONAL INFORMATION

For further information, please call: (512) 776-6541.

SUBCHAPTER C. DESIGNATION OF PRACTICES SERVING MEDICALLY UNDERSERVED POPULATIONS

25 TAC §§13.31 - 13.35

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Occupations Code, §157.051, which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Texas Health and Safety Code, §104.042, which authorizes the executive commissioner by rule to establish reasonable procedures for the collection of data by the department from health care facilities; Texas Health and Safety Code, §105.005, which authorizes the executive commissioner to adopt rules to govern the reporting and collection of data; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the

Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

§13.31. Purpose and Scope.

(a) Purpose. The purpose of these sections is to implement the provisions in the Texas Occupations Code, §157.051(11)(F), by the establishment of program rules for the designation of practices serving medically underserved populations (Practice-MUPs).

(b) Scope. The scope of these sections is to describe the criteria and procedures that the Department of State Health Services (department) will use in designating Practice-MUPs. The criteria will apply to practices not already qualified under the other definitions of eligible practices identified in the Texas Occupations Code, §157.051(11).

(c) Administration. The department shall designate Practice-MUPs.

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 26, 2018.

TRD-201803243
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: August 15, 2018
Proposal publication date: March 16, 2018
For further information, please call: (512) 776-6541

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SUBCHAPTER E. DATA COLLECTION

25 TAC §13.51, §13.52

The new sections are adopted under Texas Occupations Code, §157.051, which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Texas Health and Safety Code, §104.042, which authorizes the executive commissioner by rule to establish reasonable procedures for the collection of data by the department from health care facilities; Texas Health and Safety Code, §105.005, which authorizes the executive commissioner to adopt rules to govern the reporting and collection of data; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

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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Barbara L. Klein
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6541

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SUBCHAPTER F. MEDICALLY UNDERSERVED AREAS AND RESIDENT PHARMACISTS

25 TAC §13.61

The repeal is adopted under Texas Occupations Code, §157.051, which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Texas Health and Safety Code, §104.042, which authorizes the executive commissioner by rule to establish reasonable procedures for the collection of data by the department from health care facilities; Texas Health and Safety Code, §105.005, which authorizes the executive commissioner to adopt rules to govern the reporting and collection of data; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

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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Barbara L. Klein
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §80.4 and §80.252 *without changes* to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 1007) and, therefore, the sections will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2013, the 83rd Texas Legislature passed House Bill (HB) 1600 and Senate Bill (SB) 567, which became effective September 1,

2013. HB 1600 and SB 567 transferred from the TCEQ to the Public Utility Commission of Texas (PUC) the functions relating to the economic regulation of water and sewer utilities. HB 1600 and SB 567 amended Texas Water Code (TWC), §5.311(a), as it relates to the commission's authority to delegate to an administrative law judge (ALJ) of the State Office of Administrative Hearings (SOAH) the responsibility to issue interlocutory orders related to interim rates under TWC, Chapter 13. Amended TWC, §5.311(a), removes the commission's authority to delegate the issuance of interlocutory orders related to interim rates under TWC, Chapter 13. Because the commission adopts changes to §80.4 to implement HB 3735 and SB 1430 (85th Texas Legislature, 2017), the commission adopts in this same rulemaking to remove §80.4(c)(15), which implements HB 1600 and SB 567 (83rd Texas Legislature, 2013), to avoid open section conflicts under *Texas Register* publication requirements. The remainder of HB 1600 and SB 567 will be implemented in a separate rulemaking project (Rule Project Number 2013-057-291-OW).

In 2017, the 85th Texas Legislature passed HB 3735 and SB 1430, which became effective on September 1, 2017. SB 1430 amended the TWC as it relates to a requirement that the TCEQ provide an expedited procedure for acting on certain applications for an amendment to a water right by applicants that begin to use desalinated seawater. New TWC, §11.122(b-1), provides that an applicant has a right, under specified circumstances, to expedited consideration of an application to change the diversion point for their existing non-saline surface water right when the applicant begins using desalinated seawater. New TWC, §11.122(b-2), further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of other applications that are not subject to TWC, §11.122(b-1). Finally, for a contested case hearing relating to an application under new TWC, §11.122(b-1), amended Texas Government Code, §2003.047(e-3) and (e-6), require the SOAH ALJ to complete a proceeding and provide a proposal for decision (PFD) to the commission not later than the 270th day after the date the matter was referred for a hearing. Amended Texas Government Code, §2003.047(e-3), allows the ALJ to extend a TWC, §11.122(b-1) proceeding by agreement of the parties with the approval of the ALJ; or by the ALJ if the judge determines that failure to extend the deadline would unduly deprive a party of due process or another constitutional right. Under existing Texas Government Code, §2003.047(e-4), for the purposes of Texas Government Code, §2003.047(e-3), a political subdivision has the same constitutional rights as an individual.

HB 3735 includes the same provisions described in SB 1430, which were added to HB 3735 in a Senate Committee Substitute. Other changes in HB 3735 are included in corresponding rulemakings under 30 TAC Chapters 295 and 297, published in this issue of the *Texas Register.*

The commission removes §80.4(c)(15) to implement the transfer of functions from the TCEQ to the PUC required by HB 1600 and SB 567 (83rd Texas Legislature, 2013). Further, the commission adopts amendments to Chapter 80, to implement the changes to the TCEQ contested case hearing process required by HB 3735 and SB 1430 (85th Texas Legislature, 2017).

In September 2017, the commission held an informal stakeholder meeting to solicit comments regarding the implementation of HB 3735 and SB 1430. While staff intends to strictly implement the legislation as the legislature intended, staff did ask for input from stakeholders on the following issues: How to implement SB 1430 and HB 3735, which require the TCEQ to provide an expedited procedure for certain amendments to water rights and also requires the executive director to prioritize the technical review of those applications over applications that are not subject to the expedited process? What should the "expedited process" look like? Is the expedited process for desalination permits in 30 TAC Chapter 295, Subchapter G, an appropriate model? What does "prioritize" mean? How does it harmonize (or not) with the priority system? Does prioritize mean to skip the line of priority? If yes, how should the commission consider/model the impacts that would not occur to water rights applications, but for the expedited applications jumping to the front of the priority line?

The executive director based these rules on consideration of the legislation and consideration of comments received from the stakeholders.

In corresponding rulemakings published in this issue of the *Texas Register,* the commission also adopts to implement HB 1648 (85th Texas Legislature, 2017) in amended sections in 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements; and HB 3735, SB 864, and SB 1430 (85th Texas Legislature, 2017) in Chapter 295, Water Rights, Procedural; and Chapter 297, Water Rights, Substantive.

Section by Section Discussion

Chapter 80 sets forth the procedures for contested case hearings conducted on behalf of the TCEQ.

§80.4, Judges

Section 80.4, defines the authority and responsibilities of an ALJ that oversees a contested case hearing referred to SOAH by the TCEQ. The commission removes §80.4(c)(15), which pertains to the functions that transferred from the commission to the PUC in HB 1600 and SB 567 (83rd Texas Legislature, 2013). The subsequent paragraphs are renumbered accordingly. The commission adopts nonsubstantive amendments to renumbered §80.4(c)(16) and (17) to comply with *Texas Register* formatting requirements. The commission adopts §80.4(c)(18) which states that for applications subject to TWC, §11.122(b-1), an ALJ may extend the proceeding beyond 270 days after the first day of the preliminary hearing or on an earlier date specified by the commission if the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right; or by agreement of the parties with approval of the judge. The commission also amends §80.4(d) by adding the reference to renumbered subsection (c)(16), which was previously referenced as subsection (c)(17). The commission leaves in the reference to subsection (c)(18) in order to include the adopted paragraph in the list of paragraphs for which a political subdivision has the same constitutional rights as an individual. The commission adopts these amendments to implement Texas Government Code, §2003.047, as amended by HB 3735 and SB 1430 (85th Texas Legislature, 2017).

§80.252, Judge's Proposal for Decision

Section 80.252 sets forth the amount of time by which an ALJ must complete a contested case hearing referred to SOAH by the TCEQ and to submit a PFD to the commission. The commission amends §80.252(b) to add that applications not subject to TWC, §11.122(b-1) as well as applications filed before September 1, 2015, or applications not referred under TWC, §5.556 or §5.557 are governed by that subsection. The

commission also adopts nonsubstantive changes to §80.252(b) and (c) to comply with *Texas Register* formatting requirements. The commission adopts §80.252(d) which sets forth the timeline for conducting a contested case hearing and submitting a PFD for an application filed on or after September 1, 2017, and subject to TWC, §11.122(b-1). For these applications, adopted §80.252(d) directs the ALJ to file a written PFD with the chief clerk no later than 270 days after the first day of the preliminary hearing, the date specified by the commission, or the date to which the deadline was extended pursuant to Texas Government Code, §2003.047(e-3). Additionally, adopted §80.252(d) directs the ALJ to send a copy of the PFD by certified mail to the executive director and to each party. The subsequent subsections are re-lettered accordingly. The commission adopts these amendments to implement Texas Government Code, §2003.047, as amended by HB 3735 and SB 1430.

Final Regulatory Impact Analysis Determination

The commission reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and determined that this rulemaking is not a "Major environmental rule." The legislature in 2013 enacted HB 1600 and SB 567, both of which amended TWC, §5.311(a). HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and sewer utilities. HB 1600 and SB 567 amended TWC, §5.311(a) as it relates to the commission's authority to delegate to an ALJ of SOAH the responsibility to issue interlocutory orders related to interim rates under TWC, Chapter 13. This rulemaking implements the change in TWC, §5.311(a).

The legislature in 2017 enacted HB 3735 and SB 1430, both of which amend Texas Government Code, §2003.047. HB 3735 and SB 1430 require the TCEQ to provide an expedited procedure for acting on certain applications for an amendment to a water right by certain applicants that use desalinated seawater. HB 3735, Section 6, and SB 1430, Section 2, amend Texas Government Code, §2003.047 to add that for amendments governed by TWC, §11.122(b-1), the PFD must be prepared no more than 270 days after the date the application is referred to SOAH. This rulemaking implements that statute.

In 2015, the legislature enacted HB 2031 (84th Texas Legislature), creating TWC, Chapter 18, which relates to marine seawater desalination, and HB 4097, creating TWC, §11.1405, relating to seawater desalination projects for industrial purposes. HB 2031 stated that the purpose of the new law was to remain economically competitive in order to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. The legislature also stated that in this state, marine seawater is a potential new source of water for drinking and other beneficial uses, and that this state has access to vast quantities of marine seawater from the Gulf of Mexico. The legislature stated the purpose of HB 2031 was to "...streamline the regulatory process for and reduce the time required for and cost of marine seawater."

The purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way 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" (*see* Texas Government Code, §2001.0225(g)(3)). The specific intent of the rulemaking is to expedite the contested case hearing process for amendments to change diversion points when the holder of the water right begins using desalinated seawater and remove obsolete §80.4(c)(15), relating to the economic regulation of water and sewer utilities. Expediting the contested case hearing process is intended to encourage the use of desalinated water. The rulemaking expedites the contested case hearing process by placing a time limit on the preparation of a PFD at SOAH in contested cases of these amendments. As stated in HB 2031 (84th Texas Legislature, 2015), expediting the use of desalinated seawater supports development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits.

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225, for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not adopted solely under the TCEQ's general rulemaking authority. This rulemaking is adopted to implement specific state statutes enacted in HB 1600 and SB 567 (83rd Texas Legislature, 2013) and HB 3735 and SB 1430 (85th Texas Legislature, 2017).

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 Determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed analysis of whether these adopted rules constitute a takings under Texas Government Code, Chapter 2007 (*see* Texas Government Code, §2001.0225(g)(3)).

The specific purpose of these adopted rules is to encourage the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water by expediting the contested case hearing process for amendments to change diversion points when the holder of the water right begins using desalinated seawater and remove obsolete §80.4(c)(15), relating to the economic regulation of water and sewer utilities as those functions have transferred from the TCEQ to the PUC. In 2015, the legislature enacted requirements for expedited permitting for the diversion or transport of marine seawater under TWC, Chapter 18, and the diversion of seawater for industrial purposes under TWC, §11.1405.

These adopted rules would substantially advance this stated purpose by providing time limits on the preparation of PFDs in contested cases for amendments to change diversion points when the holder of the water right begins using desalinated seawater.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules because these rules do not impact private real property. This rulemaking removes §80.4(c)(15) and adds an expedited contested case hearing for amendments to change diversion points when the holder of the water right begins using desalinated seawater. The removal of §80.4(c)(15) is required due to the transfer of functions relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567 (83rd Texas Legislature, 2013). The intent is to remove obsolete §80.4(c)(15), relating to the economic regulation of water and sewer utilities. Further, the changes to Chapter 80 provide that for these types of amendments, if there is a contested case, the ALJ must prepare a PFD no more than 270 days after the application is referred to SOAH and imple-

ment Texas Government Code, §2003.047. These amended rules are procedural in nature. The removal of §80.4(c)(15) and this expedited contested case hearing process for these amendments does not impact private real property rights.

Even if the rules were to impact real property rights, the commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules or the prior rules relating to the use of desalinated seawater, because these are actions taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). Lack of water for drinking and other essential purposes would be a health and safety crisis. This rulemaking could help to provide more drinking water and water for other essential purposes. There will be no or very minimal burden on private real property rights because of the amount of water in the Gulf of Mexico, or a bay or arm of the Gulf of Mexico. For marine seawater, there are no permanent water rights, real property rights, that have been granted for use of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, very few water rights have been granted for this water. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water. Water for municipal and domestic needs will not be taken from this part of the Gulf of Mexico.

In addition, the commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the removal of §80.4(c)(15) based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The removal of §80.4(c)(15) is a discontinuance of the economic regulation of water and sewer 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 removal of §80.4(c)(15) falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to the removal of §80.4(c)(15).

Thus, Texas Government Code, Chapter 2007, does not apply to these adopted rules because these rules do not impact private real property, there is a public health and safety need for the rules, and the removal of §80.4(c)(15) falls within an exception under Texas Government Code, §2007.003(b)(5).

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adopted amendment to Chapter 80 that implements changes to the TCEQ contested case hearing process required by HB 3735 and SB 1430 (85th Texas Legislature, 2017) may be subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. In reviewing the removal of §80.4(c)(15) required by HB 1600 and SB 567 (83rd Texas Legislature, 2013), the commission found that the removal is neither identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4) nor will the removal affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the removal of §80.4(c)(15) is not subject to the CMP. The commission conducted a consistency determination for the adopted amendment to Chapter 80 implementing changes to the TCEQ contested case hearing process required by HB 3735 and SB 1430 (85th Texas Legislature, 2017) 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.

Although the adopted rulemaking to implement HB 3735 and SB 1430 (85th Texas Legislature, 2017) is procedural, the rulemaking relates to prior rules that expedite permitting for diverting desalinated seawater. CMP goals applicable to the adopted rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rules include those contained in 31 TAC §501.33(a). The adopted rules implement HB 3735 and SB 1430, which encourage diversions of desalinated seawater by placing a time limit on preparation of a PFD from SOAH in contested cases for amendments to add diversion points to a surface water right when the applicant begins using desalinated seawater. In 2015, in HB 2031, the legislature found, concerning the desalination rules, "...that it is necessary and appropriate to grant authority and provide for expedited and streamlined authorization for marine seawater desalination facilities, consistent with appropriate environmental and water right protections,..." Since one of the purposes of the desalination rules is to protect coastal natural resources, these adopted rules which provide an incentive for applicants to begin using desalinated seawater in lieu of their existing surface water, are consistent with the CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any CNRAs, and because one of the purposes of the adopted rules is to protect coastal and natural resources.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on March 20, 2018. The comment period closed on March 26, 2018. The commission did not receive any comments for Chapter 80.

SUBCHAPTER A. GENERAL RULES

30 TAC §80.4

Statutory Authority

This amendment is adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), relating to the TCEQ's authority over water and water rights; TWC, Chapter 18, concerning Marine Seawater Desalination Projects; TWC, §11.1405, concerning Desalination of Seawater for the Use of Industrial Purposes; and TWC, §11.122, relating to water rights amendments. This amendment is also adopted under Texas Government Code, §2003.047(e-3) and (e-6), relating to hearings for TCEQ.

The adopted amendment implements House Bill (HB) 1600 and Senate Bill (SB) 567 (83rd Texas Legislature, 2013), concerning

the transfer from the TCEQ to the Public Utility Commission of Texas the functions relating to the economic regulation of water and sewer utilities and HB 3735 and SB 1430 (85th Texas Legislature, 2017) and Texas Government Code, §2003.047(e-3) and (e-6), relating to referrals for contested case hearings to the State Office of Administrative Hearings.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
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For further information, please call: (512) 239-6812

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SUBCHAPTER F. POST HEARING PROCEDURES

30 TAC §80.252

Statutory Authority

This amendment is adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), relating to the commission's authority over water and water rights; TWC, Chapter 18, concerning Marine Seawater Desalination Projects; TWC, §11.1405, concerning Desalination of Seawater for the Use of Industrial Purposes; and TWC, §11.122, relating to water rights amendments. This amendment is also adopted under Texas Government Code, §2003.047(e-3) and (e-6), relating to hearings for TCEQ.

The adopted amendment implements House Bill 3735 and Senate Bill 1430 (85th Texas Legislature, 2017) and Texas Government Code, §2003.047(e-3) and (e-6), relating to referrals for contested case hearings to the State Office of Administrative Hearings.

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 288. WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §288.1 and §288.30.

The amendment to §288.1 is adopted *with change* to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 1013) and, therefore, will be republished. The amendment to §288.30 is adopted *without change* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2017, the 85th Texas Legislature passed House Bill (HB) 1648. HB 1648 relates to the designation of a water conservation coordinator by a retail public water utility to implement a water conservation plan. Under current law, retail public utilities that provide potable water service to 3,300 or more connections are required to submit a water conservation plan to the executive administrator of the Texas Water Development Board (Board). According to TCEQ's rules, a plan must be submitted to the Board starting May 1, 2009, and every five years thereafter, and the plan must comply with the minimum requirements established in the Board's rules. The Board is required to notify the TCEQ if the Board determines an entity has not complied with the plans or submission of plans and the commission will take appropriate enforcement action.

HB 1648 added provisions under Texas Water Code (TWC), §13.146, for the TCEQ to require retail public utilities that provide potable water to 3,300 or more connections to: 1) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and 2) identify, in writing, the water conservation coordinator to the executive administrator of the Board.

This adopted rulemaking amends §288.1 and §288.30 to include the requirements specified in HB 1648. This rulemaking under HB 1648 adds provisions requiring retail public utilities that provide potable water to 3,300 or more connections to: 1) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and 2) identify, in writing, the water conservation coordinator to the executive administrator of the Board.

In September 2017, the commission held a stakeholder meeting to solicit comments regarding the implementation of HB 1648, HB 3735, Senate Bill (SB) 864, and SB 1430 (85th Texas Legislature, 2017). The executive director based these rules on consideration of the legislation and consideration of comments received from the stakeholders.

In corresponding rulemakings published in this issue of the *Texas Register,* the commission also adopts new and amended sections in 30 TAC Chapter 80, Contested Case Hearings; 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 297, Water Rights, Substantive to implement HB 3735, SB 864, and SB 1430.

Section by Section Discussion

§288.1, Definitions

Section 288.1 defines words and terms used within Chapter 288. The commission adopts nonsubstantive changes to reorganize

and renumber definitions in order to maintain alphabetical order. The commission also adopts §288.1(23) to add a definition for "Water conservation coordinator" and renumbers the subsequent paragraphs accordingly. In response to comments regarding §288.1(23), the definition for "Water conservation coordinator" was revised by substituting the term "retail public water supplier" for "retail public utility" to make this provision consistent with the entirety of Chapter 288. Chapter 288 refers to "retail public water supplier" when referring to a "retail public utility" that provides retail potable water service, as opposed to sewer service, and that is subject to the requirements of Chapter 288.

§288.30, Required Submittals

Section 288.30 outlines the requirements for water conservation plan and drought contingency plan submittals. The commission adopts §288.30(10)(B) to require that retail public water suppliers that provide potable water to 3,300 or more connections designate a person as the water conservation coordinator responsible for implementing the water conservation plan and identify, in writing, the water conservation coordinator, including contact information for that person, to the executive administrator of the Board. In addition, the commission adopts that notification of the initial designated water conservation coordinator be provided as specified by the Board and any changes to the water conservation coordinator be provided within 90 days of the effective date of the change. The commission re-letters the subsequent subparagraphs accordingly.

Final Regulatory Impact Analysis Determination

The commission reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and determined that this rulemaking is not a "major environmental rule." HB 1648 was enacted to require that a retail public utility have a water conservation coordinator to implement its water conservation plan. This is a procedural requirement with the specific intent to aid the retail public utility in implementing its water conservation plan in order to have a more efficient plan. Therefore, the purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way 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 specific intent of this rulemaking is not to protect the environment or reduce risks to human health from environmental exposures (*see* Texas Government Code, §2001.0225(g)(3)).

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not adopted solely under the TCEQ's general rulemaking authority. This rulemaking is adopted to implement specific state statute enacted in HB 1648.

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 Determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed analysis of whether these adopted rules constitute a takings under Texas Government Code, Chapter 2007 (*see* Texas Government Code, §2001.0225(g)(3)).

The specific purpose of these adopted rules is to implement HB 1648 which requires that a retail public utility providing potable water service to 3,300 or more connections designate a water conservation coordinator responsible for implementing the water conservation plan and identify that person to the executive administrator of the Board. The intent is to aid the retail public utility in implementing its water conservation plan in order to have a more efficient plan.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules because these rules do not impact private real property. The requirement is that a retail public utility designate a water conservation coordinator to implement the water conservation plan. This designation will not impact real property.

If it could be argued that this action constitutes a taking, the action would be exempt from the requirements of Texas Government Code, Chapter 2007, Subchapter C, because under Texas Government Code, §2007.003(13) this is an action that is taken in response to a real and substantial threat to public health and safety, is designed to significantly advance the health and safety purpose, and does not impose a greater burden than is necessary to achieve the health and safety purpose. Conservation of water is important in order to have adequate drinking water and water for other purposes.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption 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, therefore, required 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 administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on March 20, 2018. The comment period closed on March 26, 2018. The commission received comments on Chapter 288 from Sledge Law Group PLLC on behalf of Benbrook Water Authority (BWA).

BWA suggested changes to the rules.

Response to Comments

General Comments

Comment

BWA commented that the proposed amendments to §288.1 and §288.30 do a good job of mirroring the language in TWC, §13.146, as amended by HB 1648.

Response

The commission appreciates this comment.

Updates to TCEQ and Board Websites

Comment

BWA recommended that the commission or the Board include on its website an updated list of each retail public water supplier's designated water conservation coordinator, to be available to the public for review.

Response

This comment is beyond the scope of this rulemaking because the legislation being implemented does not require this action. No changes were made in response to this comment.

§288.1, Definitions

Comment

BWA commented that in §288.1(23) and §288.30(10) there is inconsistency in the use of the term "retail public utility," as referenced in TWC, §13.146, amended by HB 1678, and in §288.1(23), and the use of the term "retail public water supplier," as referenced in §288.30(10).

Response

The commission agrees with this comment and has made non-substantive changes to §288.1(23) substituting the term "retail public water supplier" for "retail public utility" to make this provision consistent with the entirety of Chapter 288. Chapter 288 refers to "retail public water supplier" when referring to a "retail public utility" that provides retail potable water service, as opposed to sewer service.

Proposed §288.30

Comment

BWA supported the proposed amendment to §288.30(10) that requires the designation of a water conservation coordinator as a submission to the Board separate and apart from the submission of a water conservation plan to the Board. BWA believed that this process of designating a water conservation coordinator as a one-time submission to the Board, unless changed at a future date, separate and apart from being an element of a water conservation plan, which is submitted to the Board once every five years, is the easiest, least complex way to implement the statute.

Response

The commission acknowledges this comment.

Comment

BWA commented that the proposed language in §288.30(10)(B) should be revised to state that a retail public water supplier may also identify as its designated water conservation coordinator a position and the contact information for that position in lieu of a specific individual to avoid having to notify the Board each time there is employee turnover in the position designated as water conservation coordinator.

Response

The statute, as amended in HB 1648, specifically states that "a person," as opposed to a position, be designated as a water conservation coordinator. No changes were made in response to this comment.

SUBCHAPTER A. WATER CONSERVATION PLANS

30 TAC §288.1

Statutory Authority

This amendment is adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; and TWC, §5.013(a)(1), concerning the commission's authority over water and water rights. This amendment is also adopted under TWC, §13.146, concerning water conservation plans.

The amendment implements House Bill 1648 (85th Texas Legislature, 2017) and TWC, §13.146(1) - (3), which relates to the requirement for retail public utility to have a water conservation coordinator.

§288.1. Definitions.

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

(1) Agricultural or Agriculture--Any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) Agricultural use--Any use or activity involving agriculture, including irrigation.

(3) Best management practices--Voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

(4) Conservation--Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(5) Commercial use--The use of water by a place of business, such as a hotel, restaurant, or office building. This does not include multi-family residences or agricultural, industrial, or institutional users.

(6) Drought contingency plan--A strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).

(7) Industrial use--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, and the development of power by means other than hydroelectric, but does not include agricultural use.

(8) Institutional use--The use of water by an establishment dedicated to public service, such as a school, university, church, hospital, nursing home, prison, or government facility. All facilities dedicated to public service are considered institutional regardless of ownership.

(9) Irrigation--The agricultural use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water from a public water supplier.

(10) Irrigation water use efficiency--The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

(11) Mining use--The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field re-pressuring.

(12) Municipal use--The use of potable water provided by a public water supplier as well as the use of sewage effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses.

(13) Nursery grower--A person engaged in the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, who grows more than 50% of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, grow means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease, and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(14) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) Public water supplier--An individual or entity that supplies water to the public for human consumption.

(16) Regional water planning group--A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

(17) Residential gallons per capita per day--The total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year.

(18) Residential use--The use of water that is billed to single and multi-family residences, which applies to indoor and outdoor uses.

(19) Retail public water supplier--An individual or entity that for compensation supplies water to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants when that water is not resold to or used by others.

(20) Reuse--The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(21) Total use--The volume of raw or potable water provided by a public water supplier to billed customer sectors or nonrevenue uses and the volume lost during conveyance, treatment, or transmission of that water.

(22) Total gallons per capita per day (GPCD)--The total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in this chapter shall be credited against total diversion volumes for the purposes of calculating GPCD for targets and goals.

(23) Water conservation coordinator--The person designated by a retail public water supplier that is responsible for implementing a water conservation plan.

(24) Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

(25) Wholesale public water supplier--An individual or entity that for compensation supplies water to another for resale to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants as an incident of that employee service or tenancy when that water is not resold to or used by others, or an individual or entity that conveys water to another individual or entity, but does not own the right to the water which is conveyed, whether or not for a delivery fee.

(26) Wholesale use--Water sold from one entity or public water supplier to other retail water purveyors for resale to individual customers.

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. REQUIRED SUBMITTALS

30 TAC §288.30

Statutory Authority

This amendment is adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, §5.103,

concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; and TWC, §5.013(a)(1), concerning the commission's authority over water and water rights.

The amendment implements House Bill 1648 (85th Texas Legislature, 2017) and TWC, §13.146(2) and (3), which relate to the requirement for retail public utility to have a water conservation coordinator.

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 295. WATER RIGHTS, PROCEDURAL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§295.73, 295.121, and 295.122; the repeal of §§295.121 - 295.126; and amendments to §§295.151 - 295.153.

New §295.73 and the amendment to §295.153 are adopted *with changes* to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 1019) and, therefore, will be republished. New §295.121 and §295.122; the repeal of §§295.121 - 295.126; and amendments to §295.151 and §295.152 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2017, the 85th Texas Legislature passed House Bill (HB) 3735, Senate Bill (SB) 864, and SB 1430, which all became effective on September 1, 2017. SB 1430 amended the Texas Water Code (TWC) to require that the TCEQ provide an expedited procedure for acting on certain applications for an amendment to a water right by applicants that begin to use desalinated seawater. New TWC, §11.122(b-1), provides that an applicant has a right, under specified circumstances, to expedited consideration of an application to change the diversion point for their existing non-saline surface water right when the applicant begins using desalinated seawater. New TWC, §11.122(b-2), further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of other applications that are not subject to TWC, §11.122(b-1).

HB 3735 includes the same provisions described in SB 1430, which were added to HB 3735 in a Senate Committee Substitute. HB 3735 additionally amended TWC, §11.125, to replace specific map requirements in TWC, §11.125(a) with a more general requirement to submit maps in the form prescribed by the commission and removed additional specific map requirements by repealing TWC, §11.125(b) and (c).

SB 864 amended the TWC as it relates to the procedure for obtaining a right to use state water if the applicant proposes an alternative source of water that is not state water. SB 864 amends notice requirements relating to alternate sources of water used in water rights applications. Amended TWC, §11.132(c) and §11.143(e), require that the notice of an application under those sections identify any proposed alternative sources of water. Amended TWC, §11.132(d) and §11.143(f), require that the commission provide mailed notice of an application to any groundwater conservation district (GCD) with jurisdiction over groundwater production in an area from which the applicant proposes to use groundwater as an alternative source. Amended TWC, §11.143(f), requires published notice of a hearing in a newspaper of general circulation in each county in which a GCD is located for applications to use an exempt reservoir to convey groundwater under the jurisdiction of a GCD.

The commission adopts amendments to Chapter 295 to implement the changes to the TCEQ water right amendment process required by HB 3735 and SB 1430, the TCEQ water rights mapping requirements required by HB 3735, and the TCEQ water right notices required by SB 864.

In September 2017, the commission held an informal stakeholder meeting to solicit comments regarding the implementation of HB 1648, HB 3735, SB 864, and SB 1430. While staff intends to strictly implement the legislation as the legislature intended, staff asked for input from stakeholders on the following issues: How to implement SB 1430 and HB 3735, which require the TCEQ to provide an expedited procedure for certain amendments to water rights and also requires the executive director to prioritize the technical review of those applications over applications that are not subject to the expedited process? What should the "expedited process" look like? Is the expedited process for desalination permits in Chapter 295, Subchapter G, an appropriate model? What does "prioritize" mean? How does it harmonize (or not) with the priority system? Does prioritize mean to skip the line of priority? If yes, how should the commission consider/model the impacts that would not occur to water rights applications, but for the expedited applications jumping to the front of the priority line?

The second topic of interest on which staff asked for input relates to the new mailed and published notice requirements to GCDs and their areas required in SB 864. A strict reading of SB 864 appears to only require mailed notice to a GCD and published notice in the GCD area for an application under TWC, §11.143, that uses groundwater under the jurisdiction of a GCD as an alternate source. New TWC, §11.132(d)(2)(B), also appears to require mailed notice to a GCD of a new appropriation which uses groundwater under the jurisdiction of the GCD as an alternate source to support the application. Since SB 864 became effective September 1, 2017, the executive director has put in place procedures to accomplish all of these notice requirements. During the stakeholder meeting, staff requested input on these new notice requirements in other instances. Specifically, did the legislature intend to expand the published notice requirement in TWC, §11.132(d)(3) to include publishing in a newspaper of general circulation in the area of the GCD (assuming they might be different than the project area in some instances)? Should the new mailed and/or published notice requirements apply to new bed and banks authorizations under TWC, §11.042(c), which use groundwater under the jurisdiction of a GCD? Current TCEQ

rule, §295.161, requires downstream mailed notice, but does not require any published notice.

The executive director based these rules on consideration of the legislation and consideration of comments received from the stakeholders.

In corresponding rulemakings published in this issue of the *Texas Register,* the commission also adopts to implement HB 1648 in amended sections in 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines, and Requirements; HB 3735 in 30 TAC Chapter 297, Water Rights, Substantive; and SB 1430 and HB 3735 in 30 TAC Chapter 80, Contested Case Hearings.

Section by Section Discussion

§295.73, Texas Water Code, §11.122(b-1) Amendment Applications

The commission adopts new §295.73 to implement the requirement in TWC, §11.122(b-1) as added by HB 3735 and SB 1430, which requires that the TCEQ provide expedited technical review of an application to change the diversion point for a water right holder's existing non-saline surface water right when the applicant begins using desalinated seawater and further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of all other applications that are not subject to the expedited process. Adopted new §295.73(a) requires that prior to being declared administratively complete, applicants requesting expedited technical review of an amendment under §295.73 must demonstrate the amount of desalinated seawater the water right holder has begun using or demonstrate with certainty any amount of desalinated seawater the water right holder will begin using in the future. This information is necessary for the commission to determine whether the application is eligible for the expedited consideration requested.

The expedited technical review and priority mandated by HB 3735 and SB 1430 are implemented by adopted new §295.73(b) which states "Technical review for applications under this section will be completed prior to all other administratively complete applications in the basin that do not meet the requirements of this section." The expedited technical review, which prioritizes applications that meet the requirements of TWC, §11.122(b-1) over other administratively complete applications differs from the commission's current practice of processing applications in the order in which they became administratively complete. Adopted new §295.73(c) addresses the possibility that prioritizing applications under adopted new §295.73(b) over other applications that were declared administratively complete before the §295.73(b) application could result in adverse impacts to the availability of water to the applications that were not prioritized. Adopted new §295.73(c) states that "The commission may include special conditions in the permit, including, but not limited to a re-opener provision, to mitigate adverse impacts on the availability of water for applications that were administratively complete prior to an application that triggered the expedited technical review under subsection (b) of this section." The reopener provision would be invoked if an application was processed after a §295.73(b) application, despite the fact that it was administratively complete prior to the §295.73(b) application, and technical review of the application revealed that there were adverse impacts on the availability of water that would not have occurred but for the §295.73(b) application being processed first.

Division 12, Maps, Plats, and Drawings Accompanying Application for Water Use Permit

The commission adopts the repeal of §§295.121 - 295.126 because HB 3735 provides for the removal of outdated mapping requirements and the replacement with more general requirements that maps must meet the requirements specified by the commission; therefore, these sections are obsolete.

§295.121, Content Requirements of Maps

The commission adopts new §295.121 to implement the more general requirements of HB 3735 that applications be accompanied by a map or plat in the form and containing the information prescribed by the commission. Adopted new §295.121 states that water right applications must include maps or plats in the form and containing the information specified in the relevant water right form and instructions for the particular authorization sought.

§295.122, Requirements for Dams and Reservoirs

The commission adopts new §295.122 which requires that maps, plats, or drawings submitted with application plans for dam and reservoir projects must include the information described in 30 TAC §299.3. This rule implements the more general requirements of HB 3735 that applications be accompanied by a map or plat in the form and containing the information prescribed by the commission.

§295.151, Notice of Application and Commission Action

The commission adopts §295.151(b)(9) that requires the notice to identify any proposed alternative source of water, other than state water, identified by the application. The subsequent paragraphs are renumbered accordingly.

§295.152, Notice By Publication

The commission adopts amended §295.152(a) to specify that this subsection applies to an application for a permit pursuant to TWC, §11.121, or for an amendment to a TWC, §11.121, permit, a certified filing, or a certificate of adjudication pursuant to TWC, §11.122, and §295.158(b). The commission also adopts §295.152(b) to require that an application for a permit pursuant to TWC, §11.143, or for an amendment pursuant to TWC, §11.122, to a TWC, §11.143, permit, or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under TWC, §11.142, in which the applicant proposes to use groundwater from a well located within a GCD as an alternative source of water, the applicant shall cause the notice issued by the chief clerk to be published in a newspaper of general circulation within each county in which the GCD is located. The subsequent subsection is re-lettered.

§295.153, Notice By Mail

For an application for a permit pursuant to TWC, §11.121, or for an amendment to a TWC, §11.121 permit, a certified filing, or a certificate of adjudication pursuant to TWC, §11.122 and §295.158(b), the commission adopts §295.153(b)(3) to require notice be mailed to each GCD with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a GCD as an alternative source of water. The subsequent paragraph is renumbered. At adoption, §295.153(b)(3) was revised to correct a grammatical error.

For an application for a permit pursuant to TWC, §11.143, or for an amendment pursuant to TWC, §11.122, to a TWC, §11.143 permit, or a certificate of adjudication which authorizes

diversions from a reservoir which is exempted under TWC, §11.142 and pursuant to §295.158(b), the commission adopts §295.153(c)(2) to require notice be mailed to each GCD with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a GCD as an alternative source of water. The subsequent paragraph is renumbered.

The commission also adopts nonsubstantive amendments to §295.153(b) - (d) to comply with *Texas Register* formatting requirements.

Final Regulatory Impact Analysis Determination

The commission reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and has determined that none of the rules in this rulemaking are a "Major environmental rule." The legislature in 2017 enacted HB 3735 and SB 1430, both of which amend TWC, §11.122 to add TWC, §11.122(b-1) and (b-2). HB 3735 and SB 1430 require the TCEQ to provide an expedited procedure for changing or adding diversion points in a water right when the water right holder begins to use desalinated seawater. HB 3735 also amends TWC, §11.125 to change the map requirements in an application. This rulemaking also implements SB 864 and TWC, §11.132(c) and (d) and §11.143(e) and (f) regarding use of alternative sources of water.

In 2015, the legislature enacted HB 2031, creating TWC, Chapter 18, which relates to marine seawater desalination, and HB 4097, creating TWC, §11.1405, relating to seawater desalination projects for industrial purposes. HB 2031 stated that the purpose of the law is to remain economically competitive in order to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. The legislature also stated that in this state, marine seawater is a potential new source of water for drinking and other beneficial uses, and that this state has access to vast quantities of marine seawater from the Gulf of Mexico. The legislature stated the purpose of HB 2031 was to "...streamline the regulatory process for and reduce the time required for and cost of marine seawater."

Therefore, the purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way 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 specific intent of this rulemaking is not to protect the environment or reduce risks to human health from environmental exposures (*see* Texas Government Code, §2001.0225(g)(3)). The specific intent of the rulemaking is to expedite the permitting process for amendments to change diversion points when the holder of the water right begins using desalinated seawater and to prioritize the technical review of such amendments over other applications. This is intended to encourage the use of desalinated water. As is stated in HB 2031, expediting the use of desalinated seawater supports development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits.

Concerning the amended map rules and notice rules relating to the use of an alternative source of water, these are also not "Major environmental rules." The purpose of these rules is to change requirements for maps in applications, and to add additional information in notices when an applicant wants to use an alternate source of water. The rules also add some additional notice requirements. These rules are procedural in nature and are not to protect the environment or reduce risks to human health from environmental exposure.

Even if any of these rules in this rulemaking were a "Major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225, for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not adopted solely under the TCEQ's general rulemaking authority. This rulemaking is adopted under specific state statutes enacted in HB 3735, SB 864, and SB 1430.

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 Determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed analysis of whether these adopted rules constitute a takings under Texas Government Code, Chapter 2007 (*see* Texas Government Code, §2001.0225(g)(3)).

The specific purpose of these adopted rules is to encourage the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water by expediting the process for amendments to change diversion points when the holder of the water right begins using desalinated seawater. In 2015, the legislature added requirements for expedited permitting for the diversion or transport of marine seawater under TWC, Chapter 18, and the diversion of seawater for industrial purposes under TWC, §11.1405. The adopted rules would substantially advance this stated purpose by allowing the expedited amendments to permits to change or add diversion points when the holder of the water right begins using desalinated seawater.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules because these rules do not impact private real property. These rules only allow an expedited amendment to a water right holder to change or add diversion points when the holder begins to use desalinated seawater. These diversions at new diversion points are limited by the amount of desalinated seawater used by the holder and the amount of water the holder was authorized to divert under the water right before the requested amendment. The water diverted from these diversion points cannot to be transferred to another basin. Therefore, this expedited amendment process does not impact private real property rights.

Even if these rules were to impact real property rights, the commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules. These rules and the prior rules relating to the use of desalinated seawater are actions taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). Lack of water for drinking and other essential purposes would be a health and safety crisis. This rulemaking could help to provide more drinking water and water for other essential purposes. There will be no or very minimal burden on private real property rights because of the amount of water in the Gulf of Mexico, or a bay or arm of the Gulf of Mexico. For marine seawater, there are

no permanent water rights, real property rights, that have been granted for use of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, very few water rights have been granted for this water. Diversions of seawater in a bay or arm of the Gulf are also limited to industrial water. Water for municipal and domestic needs will not be taken from this part of the Gulf of Mexico.

Concerning the amended map and notice rules, these rules do not impact private real property. The purpose of these procedural rules is to change requirements for maps in applications, and to add notice of an application for use of an alternate source of water. The intent is to bring mapping and platting requirements in TCEQ's rules up-to-date, and to provide notice to GCDs and other interested parties if an applicant is planning to use groundwater as an alternate source. These rules are procedural in nature and do not impact private real property.

Thus, Texas Government Code, Chapter 2007, does not apply to these adopted rules because these rules do not impact private real property. Furthermore, under the adopted rules, the commission may include special conditions in a permit issued under this rulemaking to mitigate adverse impacts on the availability of water for other water rights and water right applicants.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adopted rules related to amended TWC, §11.122, may be subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

Although the adopted rules are procedural, the rules are related to prior rules that expedite permitting for diverting desalinated seawater. CMP goals applicable to the adopted rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rules include those contained in 31 TAC §501.33(a). The adopted rules implement HB 3735 and SB 1430, which encourage diversions of desalinated seawater by allowing expedited processing for amendments to add diversion points to an existing water right when the applicant begins use of desalinated seawater. In 2015, in HB 2031, the legislature found, concerning the existing rules, "...that it is necessary and appropriate to grant authority and provide for expedited and streamlined authorization for marine seawater desalination facilities, consistent with appropriate environmental and water right protections..." Since one of the purposes of the expedited amendment rules is to encourage applicants to begin using desalinated seawater in lieu of their existing surface water, the rules are consistent with the CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any CNRAs, and because one of the purposes of the adopted rules is to protect coastal and natural resources.

The commission reviewed the rules related to mapping and notice in the rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rules are administrative in nature and will have no substantive effect on commission actions subject to the CMP and are, therefore, consistent with the CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission held a public hearing on March 20, 2018. The comment period closed on March 26, 2018. The commission received comments on Chapter 295 from Poseidon Water LLC (Poseidon) and Prairielands Groundwater Conservation District (the District).

Poseidon and the District suggested changes to the rules.

Response to Comments

General

Comment

Poseidon commented that HB 3735 and SB 1430 reflect that the state wants desalinated water strategies to play an important role in meeting the water supply needs for protection of human health and economic prosperity. Poseidon commented that the Legislative Statement of Intent for SB 1430 explained that the 2017 State Water Plan indicates that Texas' population is expected to reach 51 million people by 2070 and faces a potential water shortage of 8.9 million acre-feet of water per year under drought of record conditions and meeting future water needs will require new and innovative technologies such as seawater desalination. Poseidon further commented that SB 1430 seeks to encourage the development and use of desalinated seawater and the legislation does not change the priority date of an existing water right or the nature of the technical analysis that is conducted to establish a new diversion point.

Response

The commission acknowledges these comments. No changes were made in response to these comments.

Comment

The District commented that groundwater is a shared resource that is also privately owned, and any improper, wasteful, or illegal production or use of the resource may have far-reaching impacts on landowners' private property rights associated with the groundwater underlying the GCD.

Response

Jurisdiction over whether groundwater use is improper, wasteful, or illegal resides in the GCD from which the groundwater originates. No changes were made in response to these comments.

Proposed §295.73(a)

Comment

Poseidon commented that the rule requirement that the applicant must demonstrate the amount of desalinated seawater the water right holder has begun using does not account for "the

typical ramp up period for increased usage of desalinated water." Poseidon further commented that the ramp up should be accommodated by processing applications for the volume of water that "will be in use within a reasonable time of when the water right amendment is issued." Poseidon commented that a contract supporting the ramp up in usage that will occur within a reasonable time should support the processing of the application at the greater volume. Specifically, Poseidon requested that §295.73(a) be amended to include the following language: "(a) Prior to being declared administratively complete, applications submitted under this section must demonstrate the amount of desalinated seawater the water right holder has (i) begun using and (ii) for which it is applying and can demonstrate commitments for use within a reasonable time."

Response

The commission agrees that TWC, §11.122(b-1), can be reasonably interpreted to allow permit amendments to include future use of a designated amount of desalinated seawater as well as an amount of use of desalinated seawater at the time of the amendment application. An amendment granted under this section will be conditioned upon the actual use of the specified amount of desalinated seawater. The commission agrees that this interpretation of the statute is consistent with the statutory intent of encouraging use of desalinated seawater. Language was added to §295.73(a) in response to these comments stating that, "If the water right holder can demonstrate with certainty a specified amount of desalinated seawater the water right holder will begin using in the future, the commission may declare the application administratively complete, but condition any amendment granted under this section upon the actual use of the specified amount of desalination seawater."

Proposed §295.73(b)

Comment

Poseidon commented that while the expedited diversion point amendment applications authorized under SB 1430 are meant to be prioritized, the legislation is not intended to bring any and all draft permits in the basin to a halt regardless of their relationship to the expedited permit. Poseidon further commented that the legislature intended the commission to have the flexibility to determine which other applications may proceed to final draft permit and which need to be put on hold to take into account the expedited diversion point amendment. Poseidon provided several examples of instances in which Poseidon believed the commission may, based on its expertise, conclude that an application would have no impact on an expedited diversion point amendment. Poseidon commented that the executive director should have discretion to determine that particular applications should proceed to final draft permit without delay. Poseidon proposed the following language to replace proposed §295.73(b): "Technical review for applications under this section shall be completed prior to all other administratively complete applications in the basin that do not meet the requirements of this section, except to the extent that the Executive Director determines the completion of technical review of the application under this section is not reasonably likely to affect technical review of a particular administratively complete application."

Response

TWC, §11.122(b-2), is the basis for the proposed requirement in §295.73(b) that technical review for expedited diversion point amendments will be completed prior to all other administratively complete applications in the basin. TWC, §11.122(b-2) states "The executive director or the commission shall prioritize the technical review of an application that is subject to Subsection (b-1) over the technical review of applications that are not subject to that subsection." The commission does not share Poseidon's interpretation of proposed §295.73(b) that the executive director must cease working on all other applications in a basin until the expedited diversion point amendment is completed. The executive director can continue to use staff resources to work on the technical review of other applications in the basin as long as staff is prioritizing the expedited diversion point amendment as required by TWC, §11.122(b-2), and the expedited diversion point amendment's technical review is completed prior to all other applications in the basin. No changes were made in response to these comments.

Proposed §295.73(c)

Comment

Poseidon commented that proposed §295.73(c) includes a provision that the commission may include special conditions in an expedited diversion point amendment permit, including, but not limited to a re-opener provision, to mitigate adverse impacts on the availability of water for applications that were administratively complete prior to an application that triggered the expedited review under this section. Poseidon commented that the rationale provided for the provision is that the commission's normal procedure is to process applications in the order received. Poseidon further commented that to incentivize seawater desalination projects, the legislature expressly overrode the commission's normal procedure to provide an expedited path to a final amendment that creates a predictable, reliable, and marketable water supply. Poseidon commented that the operative element of the legislation is time saved in technical review and time saved in contested case hearing and that minimizing the time it takes to get to a final amendment is the core incentive of the legislation. Poseidon requested that the commission not adopt §295.73(c).

Response

A fundamental principal in Texas' prior appropriation water law is the doctrine of seniority whereby each water right is assigned a specific priority date. TWC, §11.027, states that "As between appropriators, the first in time is the first in right." The commission and its predecessor water rights agencies have considered the priority date of a permit or an amendment to be the date upon which an administratively complete application has been accepted for filing and filed with the chief clerk. This interpretation is codified in §297.44(c) of the commission's current rules. The commission does not agree with Poseidon's comment that the plain language in TWC, §11.122(b-1) and (b-2), "expressly overrode" the longstanding priority doctrine. Instead, the legislation requires the commission to expedite processing of certain applications and to prioritize their technical review. The commission proposes §295.73(c) as a means to harmonize TWC, §11.027, with the provisions in TWC, §11.122(b-1) and (b-2). The commission believes that the process outlined in proposed §295.73 will result in expedited final amendments being issued for the diversion point amendments that meet TWC, §11.122(b-1) and (b-2), requirements while also preserving the priority date for earlier filed applications and mitigating any impacts to the earlier filed applications caused by the expedited diversion point amendment being prioritized in technical review. No changes were made in response to these comments.

Proposed §295.152

Comment

The District recommended that the commission use its discretion to expand the proposed requirement in §295.152(b) beyond the current proposed requirement to publish notice in the area of a GCD for a permit pursuant to TWC, §11.143, or for an amendment under TWC, §11.122, to a TWC, §11.143, permit, or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under TWC, §11.142, in which the applicant proposes to use groundwater from a well located within a GCD as an alternative source of water. Specifically, the District requested that the commission revise the proposed amendment to §295.152 to state that "for an application for a permit pursuant to TWC, §11.121, or for an amendment to a permit, a certified filing, or a certificate of adjudication pursuant to TWC, §11.122, and 30 TAC §295.158(b), in which the applicant proposes to use groundwater from a well located in a GCD as an alternative source of water, the applicant shall cause notice issued by the chief clerk to be published in a newspaper of general circulation within each county in which the GCD is located." The District commented that the intent of SB 864 was to apprise not just GCDs, but also landowners in the GCD of the proposed use of groundwater as an alternative source of water in an application before the commission. The District commented that SB 864 clearly requires mailed notice to a GCD, but SB 864 is less clear on the requirements for published notice. The District commented that it is illogical to think that the legislature intended to expand published notice to the area of a GCD for applications under TWC, §11.143, that use groundwater as an alternate source, but did not intend to expand notice for other applications under TWC, §11.121 and §11.122, that use much more groundwater as an alternate source. The District commented that the controlling default language in TWC, §11.132(a), requires the commission to give notice to "persons who in the judgement of the commission may be affected by an application . . ." The District further commented that landowners in an area where groundwater is proposed to be used as an alternative source of water may be affected by an application. Finally, the District commented that the requirement to publish notice in the area of the source of the surface water may not be sufficient to provide landowners who may be affected by an application when the area of the source of surface water does not coincide with the area where the groundwater is located.

Response

In SB 864, the legislature expressly expanded notice for applications under TWC, §11.143 (formerly exempt reservoirs), to include mailed notice to a GCD and published notice to include the area of a GCD. SB 864 also expressly expanded mailed notice for other new applications under TWC, §11.121 and §11.122, by amending TWC, §11.132(d)(2)(B), to include GCDs if an application proposes to use groundwater as an alternative source. SB 864 did not similarly expand published notice under TWC, §11.132(d)(1). No changes were made in response to these comments.

Existing §295.161 (Notice for Bed and Banks Authorizations)

Comment

The District commented that existing §295.161 should also be amended to include mailed notice to GCDs and published notice in the area of a GCD for a TWC, §11.042(c), application to convey groundwater under the jurisdiction of a GCD. The District commented that the legislative intent of SB 864 applies to these conveyances. The District commented that TWC, §11.042, is silent on notice requirements applicable to bed and banks permit applications and that notice for those permit applications is provided through TWC, §11.132(a), and §295.161 which requires mailed notice to certain water right holders downstream of the discharge point as well as Texas Parks and Wildlife Department and the Public Interest Counsel. The District commented that a GCD and the landowners in the GCD have a special interest in the use of groundwater in a bed and banks application that is similar to Texas Parks and Wildlife Department and the Public Interest Counsel. The District commented that a GCD is statutorily required to manage and conserve groundwater resources and does so primarily through issuance of permits. The District commented that notice of a bed and banks application gives the GCD or an affected landowner the opportunity to ensure the applicant's use of groundwater is permitted and in compliance with the GCDs rules by participating in a hearing prior to the issuance of the bed and banks permit when groundwater may not be available.

Response

For TWC, §11.042, bed and banks applications involving groundwater from wells in a GCD, commission practice has been to require the applicant to provide a groundwater permit or proof that no permit is required. Statute and commission rules do not require notice to GCDs for these applications. However, any person, including a GCD, may request to be placed on an interested persons list and receive notices for applications within a county or basin. In SB 864, the legislature expressly expanded notice for applications under TWC, §11.143 (formerly exempt reservoirs), to include mailed notice to a GCD and published notice to include the area of a GCD. SB 864 also expressly expanded mailed notice for other new applications under TWC, §11.121 and §11.122, by amending TWC, §11.132(d)(2)(B), to include GCDs if an application proposes to use groundwater as an alternative source. SB 864 did not similarly expand notice for applications under TWC, §11.042. No changes were made in response to these comments.

SB 864

Comment

The District commented that SB 864 was created as a stakeholder consensus bill through the joint efforts of the Texas Water Conservation Association's Legislative Groundwater and Surface Water Committees and that the General Manager for the District participated in the drafting and discussions on the intent of the bill. The District commented that SB 864 was unchanged throughout the legislative process.

Response

The commission acknowledges these comments. No changes were made in response to these comments.

Comment

The District commented that commission staff requested input to specific questions relating to the implementation of SB 864.

Response

The commission clarifies that staff requested input on the questions during the informal stakeholder meeting in September 2017 and based these rules on the legislation and consideration of comments received from the stakeholders during the informal stakeholder process. No changes were made in response to these comments.

SUBCHAPTER A. REQUIREMENTS OF WATER RIGHTS APPLICATIONS GENERAL PROVISIONS

DIVISION 7. REQUIREMENTS FOR APPLICATIONS FOR AMENDMENTS TO WATER USE PERMITS AND EXTENSIONS OF TIME

30 TAC §295.73

Statutory Authority

The new rule is adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the TCEQ's authority over water and water rights; TWC, Chapter 18, concerning Marine Seawater Desalination Projects; TWC, §11.1405, concerning Desalination of Seawater for the Use of Industrial Purposes; and TWC, §11.122, relating to water rights amendments.

The new rule implements House Bill 3735 and Senate Bill 1430 (85th Texas Legislature, 2017) and TWC, §11.122(b-1) and (b-2).

§295.73. Texas Water Code, §11.122(b-1) Amendment Applications.

(a) Prior to being declared administratively complete, applications submitted under this section must demonstrate the amount of desalinated seawater the water right holder has begun using. If the water right holder can demonstrate with certainty a specified amount of desalinated seawater the water right holder will begin using in the future, the commission may declare the application administratively complete, but condition any amendment granted under this section upon the actual use of the specified amount of desalination seawater.

(b) Technical review for applications under this section will be completed prior to all other administratively complete applications in the basin that do not meet the requirements of this section.

(c) The commission may include special conditions in the permit, including, but not limited to a re-opener provision, to mitigate adverse impacts on the availability of water for applications that were administratively complete prior to an application that triggered the expedited technical review under subsection (b) of this section.

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 27, 2018.

TRD-201803251
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: August 16, 2018
Proposal publication date: February 23, 2018
For further information, please call: (512) 239-6812

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DIVISION 12. MAPS, PLATS, AND DRAWINGS ACCOMPANYING APPLICATION FOR WATER USE PERMIT

30 TAC §§295.121 - 295.126

Statutory Authority

The repeal of the rules is adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the commission's authority over water and water rights; and TWC, §11.125, relating to maps and plats.

The repeal of the rules implements House Bill 3735 (85th Texas Legislature, 2017) and TWC, §11.125(a).

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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Director, Environmental Law Division
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For further information, please call: (512) 239-6812

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30 TAC §295.121, §295.122

Statutory Authority

The new rules are adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the commission's authority over water and water rights; and TWC, §11.125, relating to maps and plats.

The new rules implement House Bill 3735 (85th Texas Legislature, 2017) and TWC, §11.125(a).

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. NOTICE REQUIREMENTS FOR WATER RIGHT APPLICATIONS

30 TAC §§295.151 - 295.153

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the commission's authority over water and water rights; TWC, §11.132, relating to notice; and TWC, §11.143, relating to use of water from an exempt reservoir for nonexempt purposes.

The amendments implement House Bill 864 (85th Texas Legislature, 2017); TWC, §11.132(c) and (d); and TWC, §11.143(e) and (f).

§295.153. Notice By Mail.

(a) If notice by mail is required, the commission shall mail the notice by first-class mail, postage prepaid, to persons listed in this section for each type of application. The commission shall mail required notice not less than 30 days before the date set for commission consideration of the application.

(b) For an application for a permit pursuant to Texas Water Code (TWC), §11.121, or for an amendment to a TWC, §11.121, permit, a certified filing, or a certificate of adjudication pursuant to TWC, §11.122, and §295.158(b) of this title (relating to Notice of Amendments to Water Rights), notice shall be mailed to the following:

(1) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed with the commission or its predecessor agencies;

(2) all navigation districts within the river basin concerned;

(3) each groundwater conservation district with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a groundwater conservation district as an alternative source of water; and

(4) other persons who, in the judgment of the commission, might be affected.

(c) For an application for a permit pursuant to TWC, §11.143, or for an amendment pursuant to TWC, §11.122, to a TWC, §11.143, permit, or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under TWC, §11.142, and pursuant to §295.158(b) of this title, notice shall be mailed to the following:

(1) each person whose claim or appropriation has been filed with the commission or its predecessor agencies and whose diversion point is downstream from the location of the dam or reservoir as described in the application;

(2) each groundwater conservation district with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a groundwater conservation district as an alternative source of water; and

(3) other persons who, in the judgment of the commission, might be affected.

(d) For an application to amend a certified filing authorizing diversions from a reservoir which is exempted under TWC, §11.142, which, if granted, will cause a change in the reservoir so that it would no longer be exempt under TWC, §11.142, notice shall be mailed to the persons listed in subsection (b) of this section.

(e) For an application to authorize the use of state water for domestic and livestock use from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit issued, the commission shall issue such notice as it deems appropriate.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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CHAPTER 297. WATER RIGHTS, SUBSTANTIVE
SUBCHAPTER E. ISSUANCE AND CONDITIONS OF WATER RIGHTS

30 TAC §297.46

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts an amendment to §297.46 *without change* to the proposed text as published in the February 23, 2018, issue of the *Texas Register* (43 TexReg 1026) and, therefore, the section will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In 2017, the 85th Texas Legislature passed House Bill (HB) 3735, which became effective on September 1, 2017. Existing Texas Water Code (TWC), §11.134(b)(3)(C), states that the commission may only grant a water right application if it is not detrimental to the public welfare. HB 3735 amended TWC, §11.134, by adding TWC, §11.134(b-1) which states that the commission may consider only the factors that are within the jurisdiction and expertise of the commission as established by TWC, Chapter 11, in determining whether an appropriation is detrimental to the public welfare. The change the commission adopts to Chapter 297 implements the further defining of the TCEQ's consideration of public welfare required by HB 3735. Specifically, the commission amends §297.46 to implement the changes required by HB 3735.

In September 2017, the commission held an informal stakeholder meeting to solicit comments regarding the implementation of HB 3735. The executive director based this rule on consideration of the legislation and consideration of comments received from the stakeholders.

In corresponding rulemakings published in this issue of the *Texas Register,* the commission also adopts new and amended sections to implement HB 3537 and SB 1430 in 30 TAC Chapter 80, Contested Case Hearings; HB 1648 in 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans,

Guidelines and Requirements; and HB 3735 and SB 1430 in 30 TAC Chapter 295, Water Rights, Procedural.

Section Discussion

§297.46, Consideration of Public Welfare

Section 297.46 provides that the commission may grant an application for a new or amended water right only if it finds that it would not be detrimental to the public welfare. The commission adopts amended §297.46 to add "For purposes of public welfare findings made under this section, the commission may consider only factors that are within the commission's jurisdiction and expertise as established in Texas Water Code, Chapter 11." The commission adopts this amendment to implement TWC, §11.134(b-1), as amended by HB 3735.

Final Regulatory Impact Analysis Determination

The commission reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and has determined that this rulemaking is not a "Major environmental rule." HB 3735 amended TWC, §11.134, to add that the TCEQ may consider only the factors that are within the jurisdiction and expertise of the TCEQ as established by TWC, Chapter 11, in determining whether an appropriation is detrimental to the public welfare. This rulemaking implements that statute.

The purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way 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 specific intent of this rule is not to protect the environment or reduce risks to human health from environmental exposures (*see* Texas Government Code, §2001.0225(g)(3)). The specific intent of the rule is to enumerate what the TCEQ may consider when it is determining whether an application for a water right is detrimental to the public welfare under TWC, §11.134(b)(3)(C). This rule is consistent with existing case law and the TCEQ's current interpretation of TWC, §11.134.

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225, for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is adopted solely under the TCEQ's general rulemaking authority. This rulemaking is adopted under a specific state statute enacted in HB 3735.

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 Determination.

Takings Impact Assessment

The commission evaluated this rule and performed analysis of whether this adopted rule constitutes a takings under Texas Government Code, Chapter 2007 (*see* Texas Government Code, §2001.0225(g)(3)). The specific purpose of the adopted rule is to incorporate the requirements of HB 3735 into the TCEQ's rules by stating that for the purpose of determining whether an application for a water right is detrimental to the public welfare under TWC, §11.134(b)(3)(C), the TCEQ may only consider factors that are within the commission's jurisdiction and expertise as established by TWC, Chapter 11. The adopted rule advances this stated purpose by incorporating this statutory directive into the rule requiring the public welfare determination. The rule does not burden private real property in any way.

Consistency with the Coastal Management Program

The commission reviewed this adopted 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 adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on March 20, 2018. The comment period closed on March 26, 2018. The commission did not receive any comments for Chapter 297.

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1) concerning the TCEQ's authority over water and water rights; and TWC, §11.134(b-1), which relates to the factors that the commission may consider when determining whether a water right application is detrimental to public welfare.

The amendment implements House Bill 3735, Section 5 (85th Texas Legislature, 2017) and TWC, §11.134(b-1), which relate to the factors that the commission may consider when determining whether a water right application is detrimental to the public welfare.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code, §531.0055, requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1.

Therefore, the executive commissioner of HHSC adopts amendments to §§49.101, 49.102, 49.202 - 49.204, 49.206 - 49.211, 49.301, 49.304, 49.305, 49.308, 49.309, 49.311, 49.411, 49.413, 49.414, 49.511, 49.521 - 49.523, 49.531 - 49.534, 49.541, 49.551, 49.601, 49.701, and 49.702, and the repeal of §49.412, concerning Contracting for Community Services. The amendments and repeal are adopted without changes to the proposed text as published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1963), and will not be re-published.

HHSC adopts amendments to §§49.205, 49.302, and 49.307, with changes to the proposed text as published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1963).

BACKGROUND AND JUSTIFICATION

Chapter 49, Contracting for Community Services, governs contracting with HHSC to provide the community-based services for which the Department of Aging and Disability Services (DADS) previously contracted. The amendments delete references to the Medically Dependent Children's Program (MDCP), as those services are now provided through STAR Kids, and delete references to relocation services, as those services are now provided through STAR+PLUS. The amendments change "DADS" to "HHSC," as appropriate, because DADS was abolished effective September 1, 2017. The amendments change "DFPS" to "HHSC," as appropriate, to reflect the transfer of certain regulatory functions of DFPS to HHSC in accordance with Texas Government Code, §531.02013. The amendments also reflect that certain functions of HHSC Consumer Rights and Services, related to the handling of complaints, have transferred to the HHSC Office of the Ombudsman. Other amendments and the repeal make contracting requirements more specific and consistent with contract provisions; consolidate monitoring provisions; clarify the requirement for a contractor to have documentation supporting a claim before submitting the claim for payment; and change the requirements for contract termination when a contractor undergoes a change of ownership or change of legal entity.

The purpose of the amendments and repeal is to help ensure HHSC contracts with qualified and competent contractors and to strengthen compliance monitoring and enforcement, thereby promoting the provision of higher quality services.

COMMENTS

The 30-day comment period ended April 29, 2018.

During this period, HHSC received comments regarding the proposed rules from four commenters, including the Texas Association for Home Care and Hospice. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Regarding proposed §49.205(a)(4), one commenter stated that centers for independent living are now under the auspices of the Administration for Community Living of the United States Department of Health and Human Services, rather than the Rehabilitation Services Administration of the United States Department of Education.

Response: HHSC agrees and has revised the rule as suggested.

Comment: Regarding proposed §49.302(q)(3), two commenters suggested changing the requirement that notice be sent to the HHSC contract staff identified on the form "Contract Approval Letter" and instead that the notice be sent to the HHSC "Contracting department" due to the number of staff changes at HHSC.

Response: HHSC agrees that requiring notice to be sent to a particular staff person may not be the most effective way to ensure delivery to the correct area within HHSC. However, because there are multiple contracting areas at HHSC, HHSC revised the rule to require contractors to send notice to the mailing address or email address identified on the form "Contract Approval Letter."

Comment: Regarding proposed §49.304(f), two commenters requested that HHSC add a timeframe to the rule for the retention of the List of Excluded Individuals and Entities (LEIE) monthly searches.

Response: HHSC declines to make the suggested change. Evidence of compliance with the monthly LEIE searches is considered a "record," as described in §49.305; therefore, contractors must maintain this evidence in accordance with record retention requirements described in §49.307(a).

Comment: Regarding proposed §49.304(f), two commenters suggested that HHSC allow contractors to shred the LEIE searches after contract monitoring has been completed.

Response: HHSC declines to make the suggested change because evidence of compliance with LEIE searches must be retained in accordance with §49.307(a).

Comment: Regarding proposed §49.305(i)(2), two commenters noted that, with faxing and emailing of documents, an original record many times does not exist. These commenters asked HHSC to consider the ongoing modernization and digitization of contractor's records and either delete the term "original" or allow for the retention of "original" records that have been "digitized."

Response: HHSC declines to make the suggested change at this time because this provision was not proposed for amendment and should have the benefit of public comment before being amended. HHSC will consider proposing an amendment to this provision in the future.

Comment: Regarding proposed §49.307(a)(1), three commenters noted that the proposed requirement for a contractor to retain records seven years after a contract expires or is terminated is burdensome, expensive, and an unreasonable expectation. Two commenters suggested changing this requirement to seven years from the end of the federal fiscal period in which services were terminated.

Response: HHSC acknowledges that the proposed rule may have resulted in contractors retaining voluminous records because a community services contract may be in effect for many years. Therefore, HHSC added §49.307(a)(2) to require a contractor to retain only its contract and any contract solicitation documents for seven years after the contract expires or is termi-

nated. HHSC also modified §49.307(a)(1) to limit the retention period for a record developed and maintained in accordance with §49.305 to seven years after the contractor submits a claim for the service about which the record relates, rather than seven years after the contract expires or is terminated. These changes are consistent with Texas Government Code §441.1855 and the Texas Procurement and Contract Management Guide and will shorten the retention period for most records. HHSC plans to amend the Form 3254, Community Services Contract - Provider Agreement, to be consistent with the adopted rule.

Comment: Regarding proposed §49.411(a), two commenters suggested that the option for HHSC to conduct a desk review be removed from the rule because conducting a desk review would hinder the efficacy of contract monitoring.

Response: HHSC declines to revise the rule because it considers desk reviews to be an effective method to monitor a contractor that allows for the efficient use of state resources, including staff time and travel expenses.

The agency changed the date in §49.307(d) from July 29, 2018, to September 1, 2018. July 29 was the anticipated effective date of the amendment, but it will not be effective until September 1, 2018, so the date was changed.

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.101, §49.102

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-5609

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SUBCHAPTER B. CONTRACTOR ENROLLMENT

40 TAC §§49.202 - 49.211

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§49.205. License, Certification, Accreditation, and Other Requirements.

(a) To be a contractor, an applicant must have a license, certification, accreditation, or other document as follows:

(1) CLASS-CFS and CLASS-SFS require:

(A) a permit to operate a child-placing agency issued by HHSC in accordance with Chapter 745 of this title (relating to Licensing); or

(B) a HCSSA license issued by HHSC in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) with:

(i) the licensed home health services (LHHS) category; or

(ii) the licensed and certified home health services (L&CHHS) category;

(2) CLASS-DSA requires a HCSSA license issued by HHSC in accordance with Chapter 97 of this title with:

(A) the LHHS category; or

(B) the L&CHHS category;

(3) DBMD requires:

(A) a HCSSA license issued by HHSC in accordance with Chapter 97 of this title with:

(i) the LHHS category; or

(ii) the L&CHHS category; and

(B) for a contractor that provides residential services to four to six individuals, an assisted living facility license Type A or Type B issued by HHSC in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities);

(4) TAS requires:

(A) written documentation from HHSC or the Administration for Community Living of the United States Department of Health and Human Services that the applicant is a center for independent living, as defined by 29 United States Code §796a;

(B) a contract other than the TAS contract; or

(C) written designation by HHSC as an area agency on aging;

(5) Medicaid hospice requires:

(A) a HCSSA license for hospice issued by HHSC in accordance with Chapter 97 of this title; and

(B) a written notification from the Centers for Medicare & Medicaid Services that the applicant is certified to participate as a hospice agency in the Medicare Program;

(6) PHC, CAS, and FC require a HCSSA license issued by HHSC in accordance with Chapter 97 of this title with:

(A) the LHHS category;

(B) the L&CHHS category; or

(C) the PAS category;

(7) DAHS requires a DAHS facility license issued by HHSC in accordance with Chapter 98 of this title (relating to Day Activity and Health Services Requirements);

(8) Title XX AFC requires for an AFC home serving four to eight individuals, an assisted living facility license Type A or Type B issued by HHSC in accordance with Chapter 92 of this title; and

(9) Title XX RC requires an assisted living facility license Type A or Type B issued by HHSC in accordance with Chapter 92 of this title.

(b) The license, certification, accreditation, or other document required by subsection (a) of this section must be valid in the service or catchment area:

(1) in which the applicant is seeking to provide services; or

(2) covered under the contractor's contract.

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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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-5609

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SUBCHAPTER C. REQUIREMENTS OF A CONTRACTOR

40 TAC §§49.301, 49.302, 49.304, 49.305, 49.307 - 49.309, 49.311

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§49.302. General Requirements.

(a) A contractor must have and maintain a license, certification, accreditation, or other documentation required of an applicant in §49.205 of this chapter (relating to License, Certification, Accreditation, and Other Requirements), except:

(1) a contractor that has had a contract for the DBMD Program continuously since September 1, 1999, and that does not provide home health or personal assistance services is not required to have a HCSSA license issued in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) for a contract in effect on September 1, 2014; and

(2) a contractor that has had a contract for AFC services in a four-bed home continuously since January 15, 2009, and that has an assisted living facility Type C license issued in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities) is not required to have an assisted living facility Type A or Type B license issued in accordance with Chapter 92 of this title.

(b) A contractor must complete any training required by HHSC as stated on the HHSC website before HHSC places a contract of the contractor on a choice list.

(c) A contractor must ensure that an employee, subcontractor, or volunteer can effectively communicate with an individual or LAR concerning service planning and the provision of services, which may require the contractor to provide an interpreter for the individual.

(d) Except as provided in HHSC rules governing services provided under the contract, a contractor must not allow an individual to perform services under the contract or perform other work that benefits the contractor.

(e) A contractor must comply with the terms of its contract, which requires compliance with applicable federal and state laws, rules, and regulations, including this chapter, rules governing services provided under the contract, and applicable reimbursement rules in 1 TAC Chapter 355 (relating to Reimbursement Rates).

(f) A contractor:

(1) must accept the reimbursement rate for a service in effect at the time the service is provided as payment in full for performance under the contract; and

(2) must not make an additional charge to the individual, any member of the individual's family, or any other source for supplementation for performance under the contract, unless specifically allowed by federal or state law, rule, or regulation.

(g) A contractor must:

(1) subscribe to receive HHSC e-mail updates, using the link provided at the HHSC website and, for its contract, select the following categories:

(A) information letters; and

(B) provider alerts; and

(2) be informed of the content of the e-mail updates.

(h) A contractor must notify HHSC of a change of ownership or change in legal entity in accordance with §49.210(a)(1) of this chapter (relating to Contractor Change of Ownership or Legal Entity).

(i) If there is a change to a contractor's physical, mailing, or e-mail address, as stated on the contractor's contract application packet or on a prior written notice of change to the information, the contractor must notify HHSC of the change and provide the new physical, mailing, or e-mail address:

(1) at least 30 days before the address changes; or

(2) if a natural or unforeseen disaster prevents compliance with paragraph (1) of this subsection, within three days after the change.

(j) If there is a change to the name of the signature authority, the contractor must notify HHSC of the change within 30 days after the change by submitting a new, fully executed HHSC "Governing Authority Resolution" form.

(k) If there is a change to the information regarding the applicant or a controlling person of the applicant being confirmed by DFPS

or HHSC as having committed abuse, neglect, or exploitation, as stated on the contractor's contract application packet or on a prior written notice of change to the information, the contractor must notify HHSC of the change within three business days after the contractor or controlling person becomes aware of the change.

(l) If a controlling person of a contractor is convicted of any crime listed in §49.206 of this chapter (relating to Ineligibility Due to Criminal History), the contractor must notify HHSC within three business days after the contractor or controlling person becomes aware of the conviction.

(m) If a contractor files for bankruptcy, the contractor must notify HHSC within 14 days after filing.

(n) If a contractor or controlling person of a contractor is excluded in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act, the contractor must notify HHSC of the exclusion change within three business days after the contractor or controlling person becomes aware of the exclusion.

(o) If a contractor or a controlling person of a contractor becomes aware the contractor or controlling person is listed on any of the following, the contractor must notify HHSC within three business days after the contractor becomes aware of the listing:

(1) the HHSC employee misconduct registry as unemployable;

(2) the HHSC nurse aide registry as revoked or suspended;

(3) the United States System for Award Management maintained by the General Services Administration;

(4) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;

(5) the LEIE maintained by the HHSC Office of Inspector General; or

(6) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts.

(p) If there is a change to any of the information on the contractor's contract application packet or on a prior written notice of change to the information, other than the information referenced in subsections (i) - (o) of this section, a contractor must notify HHSC of the change and provide the new information within 14 days after the information changes.

(q) For a notice that a contractor is required to send to HHSC in accordance with this chapter, the contractor must ensure that the notice is:

(1) in writing;

(2) signed by the signature authority; and

(3) sent to the HHSC mailing address or email address identified on the form "Contract Approval Letter" issued to the contractor when the contract was awarded.

(r) A contractor must allow HHSC and any authorized federal or state agency access to:

(1) individuals;

(2) employees, subcontractors, or volunteers of the contractor; and

(3) any premises controlled by the contractor.

(s) A contractor must not pay for any item or service furnished, ordered, or prescribed by an individual listed on either LEIE described in §49.304(f)(1) of this subchapter (relating to Background Checks).

§49.307. Record Retention and Disposition.

(a) Except as provided in subsections (c) and (d), a contractor must retain a record in the form in which it was created as follows:

(1) a record developed and maintained in accordance with §49.305 of this subchapter (relating to Records) until the latest of the following:

(A) seven years after the contractor submits a claim for the service about which the record relates;

(B) seven years after all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the record are resolved; or

(C) the individual about whom the record relates becomes 21 years of age.

(2) its contract and any contract solicitation documents until the later of the following:

(A) seven years after the contract expires or is terminated; or

(B) seven years after all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract are resolved.

(b) If a contractor destroys records containing confidential information, the records must be destroyed in a manner that makes the confidential information unusable, as follows:

(1) for paper, film, and other hard copy records, shredding, pulping, or burning; and

(2) for electronic records, disintegration, degaussing, digital shredding, or using specialized software to copy over the data.

(c) If applicable law, the contract, or rules governing services provided under the contract require a contractor to retain records for a longer period than described in subsection (a) of this section, the contractor must retain the records for the longer period.

(d) A contractor is not required to comply with subsection (a) of this section for a record not required by applicable law, rule, or the contract to be in the contractor's possession on September 1, 2018.

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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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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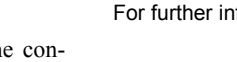
For further information, please call: (512) 438-5609



SUBCHAPTER D. MONITORING AND INVESTIGATION OF A CONTRACTOR

DIVISION 2. MONITORING AND INVESTIGATION

40 TAC §§49.411, 49.413, 49.414

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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For further information, please call: (512) 438-5609

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40 TAC §49.412

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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 25, 2018.

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-5609

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SUBCHAPTER E. ENFORCEMENT BY HHSC AND TERMINATION BY CONTRACTOR

DIVISION 2. IMMEDIATE PROTECTION

40 TAC §49.511

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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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DIVISION 3. ACTIONS

40 TAC §§49.521 - 49.523

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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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DIVISION 4. SANCTIONS

40 TAC §§49.531 - 49.534

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency

that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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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DIVISION 5. APPEALS

40 TAC §49.541

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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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Karen Ray
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DIVISION 6. TERMINATION BY CONTRACTOR

40 TAC §49.551

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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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Karen Ray
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Department of Aging and Disability Services
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SUBCHAPTER F. REVIEW BY HHSC OF EXPIRING OR TERMINATED CONTRACT

40 TAC §49.601

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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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Karen Ray
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Department of Aging and Disability Services
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SUBCHAPTER G. APPLICATION DENIAL PERIOD

40 TAC §49.701, §49.702

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.84

The Texas Department of Transportation (department) adopts amendments to §1.84, concerning Statutory Advisory Committees. The amendments to §1.84 are adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2963) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill 1522, 85th Legislature, Regular Session, amended Transportation Code, §21.003, relating to the aviation advisory committee. Previously, the statute provided that the committee consisted of six members, all of whom must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator. The amended section now requires the Texas Transportation Commission (commission), by rule, to determine the number of members of the committee, and provides that a majority of the members must have the requisite experience.

Amendments to §1.84, Statutory Advisory Committees, conform the rule to Transportation Code, §21.003, as described above. The amendments to §1.84(a)(2) specify that the commission will appoint nine members to the aviation advisory committee to staggered terms of three years. The department has determined that nine members will provide greater representation across the state, without being too cumbersome to coordinate meetings and ensure the presence of a quorum. The amendments also update the requisite level of experience for committee membership. In addition, members may only serve three consecutive terms, to ensure that the committee continues to represent a wide variety of interests across the state. This provision will apply only to service occurring after the effective date of the amendments.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted 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, §21.003, which requires the commission, by rule, to determine the number of members of the aviation advisory committee.

CROSS REFERENCE TO STATUTE

Transportation Code, §21.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: August 15, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 463-8630

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CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

SUBCHAPTER H. MEMORANDUM OF UNDERSTANDING WITH THE TEXAS HISTORICAL COMMISSION

The Texas Department of Transportation (department) adopts the repeal of Chapter 2, Subchapter H, Memorandum of Understanding with the Texas Historical Commission, §§2.251 - 2.278. The department adopts the simultaneous replacement with new §§2.251 - 2.279. The repeal and new sections are adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2965) and will not be republished.

EXPLANATION OF ADOPTED REPEAL AND NEW SECTIONS

Transportation Code, §201.607 requires the department to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic or archeological resources. Transportation Code, §201.607 also requires the department to adopt the MOU and all revisions to it by rule, and to periodically evaluate and revise the MOU. In order to meet the legislative intent and to ensure that historic and archeological resources are given full consideration in accomplishing the department's activities, the department has evaluated its MOU with the Texas Historical Commission (THC) adopted in 2013, and finds it necessary to repeal existing 43 TAC Chapter 2, Subchapter H and simultaneously replace it with a new Subchapter H, §§2.251 - 2.279.

The provisions of Chapter 2, new Subchapter H have been agreed on by the Texas Historical Commission (THC) and the department in order to update the current Memorandum of Understanding (MOU). This replacement is proposed to better explain both agencies' responsibilities. The changes include several administrative adjustments, including reorganization of the agreement. The proposed replacement also offers clarification of project activities relating to non-archeological historic properties, the addition of new definitions relating to archeological and non-archeological properties, and the addition of text relating to programmatic public outreach activities.

COMMENTS

No comments on the proposed repeal and new sections were received.

43 TAC §§2.251 - 2.278

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607, which directs the department and the THC to examine and revise their memorandum of understanding.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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43 TAC §§2.251 - 2.279

STATUTORY AUTHORITY

The new rules are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607, which directs the department and the THC to examine and revise their memorandum of understanding.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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CHAPTER 7. RAIL FACILITIES
SUBCHAPTER E. RAIL FIXED GUIDEWAY SYSTEM STATE SAFETY OVERSIGHT PROGRAM

The Texas Department of Transportation (department) adopts the repeal of Subchapter E, §§7.80 - 7.88, and the simultaneous adoption of new Subchapter E, §§7.80 - 7.95 concerning the department's safety oversight of rail fixed guideway systems. The repeal of Subchapter E, §§7.80 - 7.88, and the simultaneous adoption of new Subchapter E, §§7.80 - 7.95 are adopted without changes to the proposed text as published in the February 9, 2018, issue of the *Texas Register* (43 TexReg 734) and will not be republished.

Federal regulation 49 C.F.R. §674.11, State Safety Oversight Program, requires each state that has a rail fixed guideway public transportation system to have a State Safety Oversight program approved by the Federal Transit Administrator before April 15, 2019. This rulemaking adopts the state program and therefore, is subject to federal approval before it takes effect. The Texas Transportation Commission (commission) directs the department to file these adopted rules with the Office of the Texas Secretary of State so that they take effect after receipt of notice of federal approval of the program.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

Senate Bill 1523, 85th Legislature, Regular Session, 2017, (SB 1523) requires the department to create a state safety oversight program for rail fixed guideway public transportation systems. The legislation also aligns Texas law with federal state safety oversight requirements of 49 U.S.C. Section 5329(e), as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21), 49 C.F.R. Part 674.

New Subchapter E implements SB 1523 and 49 C.F.R. Part 674, and makes general changes and updates to the existing State Safety Oversight Program. The department has been responsible for the State Safety Oversight program since 1996. SB 1523 expands the department's authority by providing more enforcement responsibilities to comply with the changes in the federal regulations. The federal requirements must be implemented by March 2019 and these rules are necessary to meet that obligation. Failure to comply with 49 C.F.R. §674 could result in the loss of federal transit funding, including funds disbursed directly to the local transit agencies.

New §7.80, Purpose, states that the purpose of these rules is establishing the standards for the state oversight of the safety practices of rail fixed guideway systems as required by 49 C.F.R. §5330. This is a reinstatement of the current §7.80 with minor non-substantive changes.

New §7.81, Definitions, is a restatement of many of the definitions used in the existing §7.81 without substantive changes. However, definitions of "hazard," "incident," "investigation," "pre-revenue operations," "rail fixed guideway public transportation system," "rail transit agency," and "revenue service" have been added or modified to be consistent with the definitions in 49 C.F.R. §674 and federal guidance on State Safety Oversight.

New §7.82, System Safety Program Plan, is the language of existing §7.82, Program Standard, with only non-substantive changes. The language continues to track the federal requirements for a system safety program plan.

New §7.83, Hazard Management Process, is the language of existing §7.83 System Safety Program Plan regarding the hazard management process with the addition of a new hazard reporting requirement as required by the new federal regulations.

New §7.84, New State Rail Transit Agency Responsibilities, provides that a new rail transit system may not begin pre-revenue operations until the state approves the agency's system safety program plan (SSPP) in accordance with the federal requirements. This section also provides specific timelines for the submission and approval of the SSPP.

New §7.85, Modifications to a System Safety Program Plan, provides guidance for modifying an existing transit agency SSPP. The section requires a new plan to be approved prior to implementation unless the transit agency believes the modification is necessary to address an imminent safety hazard. These provisions are needed for compliance with the federal requirements.

New §7.86, Rail Transit Agency's Annual Review, primarily reinstates the requirements of existing §7.85. The section provides that the state may participate in or observe the agency's internal review. It also establishes December 1st as the date for an annual internal safety review submission to the state, a change from the current February 1 deadline. This is necessary due to the federal requirement for the state to submit an accurate report to the Federal Transit Administration (FTA) by March 15 each year. The department has found that the current timeline does not provide sufficient time for the department to prepare the required federal report.

New §7.87, Department System Safety Program Plan Audit, provides guidance on the department's audit procedures. The new section includes details on the required elements of the SSPP audit, the department's checklist procedures and timelines to coordinate with the agency and conduct the audit, details on the draft and final report process, and necessary corrective actions. The new guidance provides the transit agencies with the information needed to prepare for the department's audit and provide for a smoother process.

New §7.88, Accident Notification, revises the elements of the accident notification requirements based on new federal requirements and a pending update to the department's web-based notification and tracking system. The new section provides for the various reporting deadlines as required under 49 C.F.R. §674. The federal regulations require a 2-hour or 30-day notification for most accidents, depending on the level of severity or the type of incident. The new section details which accidents must be reported within 2 hours and those that must be reported within 30 days and mirrors the federal requirements. The section requires a transit agency to track other accidents and events that do not require reporting and to make that information available on request. The section also requires the agencies to notify the department in a format specified by the department to accommodate the transition from a manual, paper-based notification system to an online, web-based electronic system that is currently in the procurement process. This will allow the department the ability to change to the more efficient system without requiring a change to the rules.

New §7.89, Accident Investigations, describes the department's requirements for accident investigations in accordance with FTA and National Transportation Safety Board regulations. It also provides department discretion in authorizing an agency to conduct its own investigation provided that personnel meet federal qualifications. This section specifies the timeline for submitting investigation reports and provides that the department may conduct an accident investigation in specified circumstances.

New §7.90, Corrective Action Plan, includes language that is in existing §7.86, Accident Notification and Corrective Action Plans. Language is added to commit the department to reviewing a Corrective Action Plan (CAP) submitted by an agency within 30 days of receipt and requires an agency to submit CAPs every 30 days until compliance is achieved. New language also provides that failure to complete a CAP is a violation of this chapter. The new language is needed to strengthen the department's enforcement responsibilities as required under the new federal regulations.

New §7.91, Administrative Actions by the Department, ensures that the department has investigative and enforcement authority. The new federal regulations require the department enforce the federal requirements. The administrative process outlined in this section lays out the process the department has selected to enforce compliance with the program requirements. The section provides that the department will notify the transit agency of any violations and the needed compliance action and that the transit agency has 45 days to comply with the notification or to request administrative review.

New §7.92, Administrative Review, provides the process for an agency to challenge the department's decision on a CAP under §7.90 or an administrative actions under §7.91. The section provides for a review by the department's executive director or designee if the request is submitted in writing within 45 days of receipt of the violation notification. The department will make the final determination within 60 days of the review request and that failing to comply with the final determination could result in the rescission of the SSPP. The department's determination is final and enforceable by rescinding the agency's approved SSPP which may lead to petitioning a court to halt the operation of the agency's rail service. This new language is needed to establish an enforcement process as required by the federal regulations.

New §7.93, Escalation of Enforcement Action, describes the process that the department will use if an agency fails to comply with an administrative action notification. The section allows the department to escalate the issue to the transit agency's governing body to resolve safety issues before petitioning a court to halt the operation of an agency's rail service. This language is necessary to address problems with a transit agency that is not responding to the department's enforcement actions.

New §7.94, Emergency Order to Address Imminent Public Safety Concerns, describes the conditions under which the department may address imminent safety concerns that a rail transit agency is unable to eliminate. The department's executive director will rescind approval of the agency's SSPP and order the agency to cease all operations until the immediate threat is eliminated. If the agency fails to halt operations, the department may seek a temporary injunction. This new language is needed to make it clear that the department can take immediate action if continued operations create an imminent safety threat to the public.

New §7.95, Admissibility; Use of Information, is a restatement of existing §7.88 with no substantive changes.

COMMENTS

On February 27, 2018, the department conducted a public hearing to receive comments on the proposed repeal of existing rules and adoption of new rules. No comments were received at the hearing or otherwise submitted to the department.

43 TAC §§7.80 - 7.88

STATUTORY AUTHORITY

The repeals are adopted 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, §455.060, which authorizes the commission to adopt rules for the oversight of rail fixed guideway systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455, 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.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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43 TAC §§7.80 - 7.95

STATUTORY AUTHORITY

The new sections are adopted 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, §455.060, which authorizes the commission to adopt rules for the oversight of rail fixed guideway systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455, Subchapter B.

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Deputy General Counsel
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CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts amendments to §§16.2, 16.4, 16.51, 16.53, 16.54, 16.101 - 16.103, 16.105, 16.151, 16.160, and 16.202, the repeal of §16.55, and new §16.57, concerning Planning and Development of Transportation Projects. The amendments to §§16.2, 16.4, 16.51, 16.53, 16.54, 16.101 - 16.103, 16.105, 16.151, 16.160, and 16.202, the repeal of §16.55, and new §16.57 are adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2973) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS, REPEAL, AND NEW SECTION

Senate Bill (SB) 312, 85th Legislature, Regular Session, 2017, requires changes to be made to several of the planning and programming processes that the Texas Transportation Commission (commission) and the department use to plan, prioritize and finance transportation projects.

In response to SB 312, and as part of the implementation effort, the department created a planning partners group in May of 2017. This group is comprised of representatives from the commission, department administration, five department districts, and seven metropolitan planning organizations (MPOs). The purpose of convening this group was to obtain input and feedback on the development of strategies, goals and targets, and other performance measures as required by SB 312 and to obtain input and feedback on potential changes to the department's administrative rules.

As part of this rulemaking, a subcommittee of the planning partners group reviewed and provided feedback on the amendments described below.

The amendments are necessary to implement the requirements of SB 312 as well as to align the rules with updates to federal planning regulations, located at Title 23, Code of Federal Regulations, Part 450, resulting from the passage of the Fixing America's Surface Transportation Act (FAST Act).

The amendments will take effect on September 1, 2018.

Amendments to §16.2, Definitions and Acronyms, eliminate the rural transportation plan (RTP) acronym in subsection (b). The RTP will no longer be a stand-alone document. It will be integrated into the statewide long-range transportation plan (SLRTP). The subsequent items have been renumbered accordingly.

Amendments to §16.4, Introduction, clarify the required content of certain planning documents. The amendments to subsection (b)(1) specify that the metropolitan transportation plan (MTP) will include a mid-range component covering a period of ten years. This change is necessary to align the rule with Transportation Code §201.9911. The amendments also remove the reference to a stand-alone RTP, as previously described.

Amendments to §16.4(c)(1) revise the description of the SLRTP to provide that the document will have a minimum forecast period of 24 years. This change is necessary to align the rule with the timeframes prescribed by federal planning regulations. The amendments clarify that the priority-based project listing is contained in the MTPs and the unified transportation program (UTP) and is incorporated by reference into the SLRTP. These documents are updated as needed on various schedules and including them by reference ensures the list is always up-to-date. The amendments incorporate minor changes to the language regarding the state's transportation system strategies, goals, targets and other related performance measures. This change is necessary to align the rule with Transportation Code §201.601, as revised by SB 312. The amendments specify that the SLRTP will include a rural component, as previously described. Finally, the amendments correct the title of the statewide transportation improvement program (STIP) and clarify that the document will be included in the SLRTP by reference.

Amendments to §16.4(c)(2) specify that the MTP will include a mid-range component of projects covering a period of ten years, as previously described.

Subsection 16.4(c)(3) is deleted to remove the reference to a stand-alone RTP, as previously described.

Subsections 16.4(f) and (g) are deleted because the existing graphic no longer accurately reflects the planning and programming process and is unnecessary.

Amendments to §16.51, Responsibilities of Metropolitan Planning Organizations (MPO), clarify the MPO's responsibilities with respect to certain activities. Amendments to subsection (a) specify that the MTP will contain a mid-range component of projects, as previously described.

Amendments to §16.51(d)(2) provide that agreements between the transit operators and the MPOs must include provisions for developing and sharing transportation performance data, the selection and reporting of performance targets, the reporting and tracking of progress toward attainment of critical outcomes for the region, and the collection of certain data. This change is necessary to align the rule with updated federal planning regulations.

New §16.51(g) provides that the MPOs and the department shall work collaboratively to evaluate the availability, consistency and quality of the data used for performance-based planning and project selection. This change is necessary to align the rule with Transportation Code §201.9992, as added by SB 312.

Amendments to §16.53, Metropolitan Transportation Plan (MTP), clarify the requirements of the MTP. Amendments to subsection (a) specify that the MTP will include a mid-range component of projects covering a period of ten years, as previously described. The amendments clarify that reasonably expected locally funding options and contingent state, federal, and local funding sources must also be used for the development of the MTP. This change is necessary to align the rule with updated federal planning regulations. The amendments remove the requirement that development and update of the MTP be tied to the development and update of the SLRTP, which conflicted with federal planning regulations. The amendments also specify that the funding assumptions used to develop the ten-year component of the MTP may be subject to review by the department.

Amendments to §16.54, Statewide Long-Range Transportation Plan (SLRTP), clarify the requirements of the SLRTP. Amendments to subsection (a) revise the description of the SLRTP to provide that the document will have a minimum forecast period of 24 years, as previously described.

Amendments to §16.54(b)(1) correct the title of the statewide transportation improvement program (STIP) and clarify that the document will be included in the SLRTP by reference.

Amendments to §16.54(b)(2) clarify that the UTP will be included in the SLRTP by reference.

Amendments to §16.54(b)(3) and (4) incorporate minor changes to the language regarding the state's transportation system strategies, goals, targets and other related performance measures. These changes are necessary to align the rule with Transportation Code §201.601, as revised by SB 312.

Amendments to §16.54(b)(6) and (8) incorporate the requirements of the RTP as a component of the SLRTP, as previously described. Other subparagraphs are renumbered accordingly.

Amendments to §16.54(c)(1) provide that the fiscally constrained component of the SLRTP will be based on funding assumptions and forecasts set in §16.151 and §16.152, as well as any local contributions that may be identified by an individual MPO. This change is necessary to clarify the basis of the fiscal constraint for the SLRTP.

Section 16.55, Long Range Transportation Planning Recommendations for Non-Metropolitan Areas, is repealed to remove the requirement of a stand-alone RTP, as previously described.

New §16.57, Responsibilities of the Department, is added, which provides that the department will review the 10-year component of each MPOs MTP prior to adoption, provide each MPO access to the department's information systems and annually provide each MPO a listing of project evaluation data. These new provisions are required to align the rules with Transportation Code §201.9992, as added by SB 312.

Amendments to §16.101, Transportation Improvement Program (TIP), clarify the requirements of the TIP. Amendments to subsection (a) specify that the TIPs shall be designed such that once implemented, it makes progress toward achieving federal performance requirements. In addition, the TIP shall include a description of the anticipated effect of the TIP toward achieving federal performance targets and demonstrate a link between investment priorities and the performance targets. These changes are necessary to align the rule with federal planning regulations.

Amendments to §16.101(f) remove the requirement for MPOs to submit a paper copy of the TIP to the department, as a cost-saving measure.

Amendments to §16.101(g) provide that the TIP must demonstrate and maintain fiscal constraint by year. This change is necessary to align the rule with federal planning regulations.

Amendments to §16.101(k)(1)(C)(ii) clarify that the change in the cost estimate described in the rule is the federal cost. This change is necessary to align the rule with the terms of the local agreement between the department and the Federal Highway Administration.

Amendments to §16.101(n)(1) provide that the MPO shall coordinate project selection criteria relating to the statewide transportation goals with the department for the purposes of attaining consistent, common goals. This change is necessary to align the rule with Transportation Code §201.9992, as added by SB 312. Section 201.9992 uses the term "project recommendation criteria." However, for purposes of this rule, "project recommendation criteria" has the same meaning as "project selection criteria."

Amendments to §16.102, Rural Transportation Improvement Program (RTIP), clarify the requirements of the RTIP. The amendments to subsection (i)(2) clarify that public involvement is required for revisions involving added mobility projects and individually-listed federally funded projects. This change is necessary to align the rural TIPs prepared by the department with the TIPs prepared by the MPOs.

Amendments to §16.103, Statewide Transportation Improvement Program (STIP), clarify the requirements of the STIP. Amendments to subsection (b) provide that the STIP shall include a description of the effect of the STIP toward achieving federal performance targets and a demonstration of the link between investment priorities and the performance targets. This change is necessary to align the rule with federal planning regulations.

Amendments to §16.105, Unified Transportation Program (UTP) clarify the requirements of the UTP. Amendments to subsection (d)(1)(B) incorporate minor changes to the language regarding the state's transportation system strategies, goals, targets and other related performance measures. These changes are necessary to align the rule with Transportation Code §201.6015, as amended by SB 312.

Amendments to §16.105(d)(2) provide that the commission may conduct a secondary evaluation of projects based on factors such as funding availability and project readiness once the commission has evaluated projects based on strategic need and potential contribution toward meeting the transportation goals. This change is necessary to align the rule with Transportation Code §201.995, as amended by SB 312.

Amendments to §16.105(d)(3) provide that the department will coordinate project selection criteria relating to the statewide transportation goals with the MPOs for the purpose of attaining consistent, common goals. This change is necessary to align the rule with Transportation Code §201.9992, as added by SB 312. Other subparagraphs are renumbered accordingly.

Amendments to §16.105(e) remove references to the presentation of information to the commission and the required public hearing. These items are included in the amendments to §16.105(g), as described below.

Amendments to §16.105(g) consolidate existing public involvement requirements into one subsection, which provides clarity and transparency to the public involvement process related to the UTP. This change is necessary to align the rule with the requirements of Transportation Code §201.991, as amended by SB 312. In addition, the amendments incorporate minor changes to the timing of certain presentations to be made to the commission and the method by which the department will engage stakeholders for public meetings.

Amendments to §16.105(h) and (i) result from the consolidation of public involvement requirements as previously described. Subsection (i) is deleted and the text is relocated to subsection (h).

Amendments to §16.151, Long-Term Planning Assumptions, remove references to a stand-alone RTP and repealed §16.55, as previously described.

Amendments to §16.160, Funding Allocation Adjustments, correct the citation to the public involvement requirements, as previously described.

Amendments to §16.202, Reporting System for Delivery of Individual Projects, replace all references to "work program" with the term "portfolio." This change is necessary to align the rule with Transportation Code §201.998, as amended by SB 312.

Amendments to subsection (a)(1) specify that each district will seek to engage key stakeholders in portfolio review meetings. This change is necessary to align the rule with Transportation Code §201.998, as amended by SB 312.

Amendments to §16.202(a)(4) provide that the department will develop performance measures to report whether the department is developing the appropriate volume and mix of projects and is on track to meet letting targets. The amendments provide that the department will use this review for the preparation of the budget for each district and the department. In conducting the review the department will, when appropriate, seek input from key stakeholders. The amendments also specify that these performance evaluations will be reported regularly to the commission. These changes are necessary to align the rule with Transportation Code §201.998, as amended by SB 312.

Amendments to §16.202(a)(6) provide that the department will conduct a comprehensive review of the project and performance reporting system at least every four years to determine if improvements are necessary. This review will include feedback from internal and external users of the system. If improvements are necessary, the department will develop an implementation plan for those improvements. These changes are necessary to align the rule with Transportation Code §201.998, as amended by SB 312.

COMMENTS

No comments on the proposed amendments, repeal and new section were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §16.2, §16.4

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 §201.807, which requires the commission to adopt rules specifying how the department shall conduct a review of the project information reporting system, Transportation Code §201.991, which requires the commission to adopt rules explaining the department's approach to public involvement and transparency, Transportation Code §201.998, which requires the commission to adopt rules regarding a review of district project portfolios, and Transportation Code §201.9992, which requires the commission to adopt rules governing the roles and responsibilities of the department and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.807, 201.991, 201.998, and 201.9992, and Title 23, Code of Federal Regulations, Part 450.

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 26, 2018.

TRD-201803213
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: September 1, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 463-8630

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SUBCHAPTER B. TRANSPORTATION PLANNING

43 TAC §§16.51, 16.53, 16.54, 16.57

STATUTORY AUTHORITY

The amendments and new section 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 §201.807, which requires the commission to adopt rules specifying how the department shall conduct a review of the project information reporting system, Transportation Code §201.991, which requires the commission to adopt rules explaining the department's approach to public involvement and transparency, Transportation Code §201.998, which requires the commission to adopt rules regarding a review of district project portfolios, and Transportation Code §201.9992, which requires the commission to adopt rules governing the roles and responsibilities of the department and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.807, 201.991, 201.998, and 201.9992, and Title 23, Code of Federal Regulations, Part 450.

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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TRD-201803214
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: September 1, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 463-8630

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43 TAC §16.55

STATUTORY AUTHORITY

The repeal is 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 §201.807, which requires the commission to adopt rules specifying how the department shall conduct a review of the project information reporting system, Transportation Code §201.991, which requires the commission to adopt rules explaining the department's approach to public involvement and transparency, Transportation Code §201.998, which requires the commission to adopt rules regarding a review of district project portfolios, and Transportation Code §201.9992, which requires the commission to adopt rules governing the roles and responsibilities of the department and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.807, 201.991, 201.998, and 201.9992, and Title 23, Code of Federal Regulations, Part 450.

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 26, 2018.

TRD-201803215
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: September 1, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 463-8630

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SUBCHAPTER C. TRANSPORTATION PROGRAMS

43 TAC §§16.101 - 16.103, 16.105

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 §201.807, which requires the commission to adopt rules specifying how the department shall conduct a review of the project information reporting system, Transportation Code §201.991, which requires the commission to adopt rules explaining the department's approach to public involvement and transparency, Transportation Code §201.998, which requires the commission to adopt rules regarding a review of district project portfolios, and Transportation Code §201.9992, which requires the commission to adopt rules governing the roles and responsibilities of the department and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.807, 201.991, 201.998, and 201.9992, and Title 23, Code of Federal Regulations, Part 450.

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 26, 2018.

TRD-201803216
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: September 1, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 463-8630

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SUBCHAPTER D. TRANSPORTATION FUNDING

43 TAC §16.151, §16.160

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 §201.807, which requires the commission to adopt rules specifying how the department shall conduct a review of the project information reporting system, Transportation Code §201.991, which requires the commission to adopt rules

explaining the department's approach to public involvement and transparency, Transportation Code §201.998, which requires the commission to adopt rules regarding a review of district project portfolios, and Transportation Code §201.9992, which requires the commission to adopt rules governing the roles and responsibilities of the department and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.807, 201.991, 201.998, and 201.9992, and Title 23, Code of Federal Regulations, Part 450.

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 26, 2018.

TRD-201803217
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: September 1, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 463-8630

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SUBCHAPTER E. PROJECT, PERFORMANCE, AND FUNDING REPORTING

43 TAC §16.202

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 §201.807, which requires the commission to adopt rules specifying how the department shall conduct a review of the project information reporting system, Transportation Code §201.991, which requires the commission to adopt rules explaining the department's approach to public involvement and transparency, Transportation Code §201.998, which requires the commission to adopt rules regarding a review of district project portfolios, and Transportation Code §201.9992, which requires the commission to adopt rules governing the roles and responsibilities of the department and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.807, 201.991, 201.998, and 201.9992, and Title 23, Code of Federal Regulations, Part 450.

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 26, 2018.

TRD-201803218
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: September 1, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 463-8630

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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

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 95, §§95.100, (Definitions), 95.101 (Share and Depositor Insurance Protection), 95.102 (Qualifications for an Insuring Organization), 95.103 (General Powers and Duties of an Insuring Organization), 95.104 (Notices), 95.105 (Reporting), 95.106 (Amount of Insurance Protection), 95.107 (Sharing Confidential Information), 95.108 (Examinations), 95.109 (Fees and Charges), 95.110 (Enforcement; Penalty; and Appeal), 95.200 (Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights), 95.205 (State not Liable for any Deficiency), 95.300 (Share and Deposit Guaranty Credit Union, 95.301 (Authority for a Guaranty Credit Union), 95.302 (Powers), 95.303 (Subordination of Right, Title, or Interest), 95.304 (Capital Contributions; Membership Investment Shares; Termination), 93.305 (Audited Financial Statements; Accounting Procedures; Reports), 95.310 (Fees and Charges), and 95.400 (Requirements of Participating Credit Unions).

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in this chapter continue to exist. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. The commission also invites comments on how to make these rules easier to understand. For example:

-Does the rule organize the material to suit your needs? If not, how could the material be better organized?

-Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?

-Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

-Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

-Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to cudmail@cud.texas.gov. Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201803306
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 1, 2018

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Trey Pardue

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: 16 TAC §24.25(j)(3)

TGC = Temporary gallonage charge

cgc = current gallonage charge

r = water use reduction expressed as a decimal fraction (the pumping restriction)

prr = percentage of revenues to be recovered expressed as a decimal fraction (*i.e.*,

50% = 0.5)

TGC = cgc + [(prr)(cgc)(r)/(1.0-r)]

Figure: 16 TAC §24.161(e)(2)

Appendix A

NOTICE OF REQUIREMENT TO COMPLY WITH THE SUBDIVISION SERVICE EXTENSION POLICY OF {name of water supply corporation/special utility district}

Pursuant to Texas Water Code, §13.2502, _____ Water Supply Corporation/Special Utility District hereby gives notice that any person who subdivides land by dividing any lot, tract, or parcel of land, within the service area of _____ Water Supply Corporation/Special Utility District, Certificate of Convenience and Necessity No. _____, in _____ County, into two or more lots or sites for the purpose of sale or development, whether immediate or future, including re-subdivision of land for which a plat has been filed and recorded or requests more than two water or sewer service connections on a single contiguous tract of land must comply with {title of subdivision service extension policy stated in the tariff/policy} (the "Subdivision Policy") contained in _____ Water Supply Corporation's tariff/Special Utility District's policy.

_____ Water Supply Corporation/Special Utility District is not required to extend retail water or sewer utility service to a service applicant in a subdivision where the developer of the subdivision has failed to comply with the Subdivision Policy.

Applicable elements of the Subdivision Policy include:

Evaluation by _____ Water Supply Corporation/Special Utility District of the impact a proposed subdivision service extension will make on _____ Water Supply Corporation's/ Special Utility District's water supply/sewer service system and payment of the costs for this evaluation;

Payment of reasonable costs or fees by the developer for providing water supply/sewer service capacity;

Payment of fees for reserving water supply/sewer service capacity;

Forfeiture of reserved water supply/sewer service capacity for failure to pay applicable fees;

Payment of costs of any improvements to _____ Water Supply Corporation's/Special Utility District's system that are necessary to provide the water/sewer service;

Construction according to design approved by _____ Water Supply Corporation/Special

Utility District and dedication by the developer of water/sewer facilities within the subdivision following inspection.

_____ Water Supply Corporation's/Special Utility District's tariff and a map showing _____ Water Supply Corporation's/Special Utility District's service area may be reviewed at _____ Water Supply Corporation's/Special Utility District's offices, at {address of the water supply corporation/special utility district}; the tariff/policy and service area map also are filed of record at the Public Utility Commission of Texas.

Chapter 10—Hurricane Harvey

When Hurricane Harvey made landfall near Rockport on August 25, 2017, its direct impact was felt by many Texas school districts and charter schools, which were forced to suspend classes, some for an extended period.

Forty-seven Texas counties were identified by a Presidential Disaster Declaration as eligible for categories of public assistance through the Federal Emergency Management Agency: Aransas, Austin, Bastrop, Bee, Brazoria, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Lavaca, Lee, Liberty, Madison, Matagorda, Milam, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, San Patricio, Tyler, Victoria, Walker, Waller, Washington, and Wharton.

On September 12, 2017, the commissioner of education asked superintendents to submit data through the Texas Student Data System (TSDS) Summer 1 collection by close of business every Friday when enrolling students with a Crisis Code 05. On October 5, 2017, the commissioner informed superintendents that the Texas Education Agency (TEA) made modifications to TSDS Crisis Code reporting for students affected by the hurricane for the 2017–18 data submissions. The new crisis code information serves various purposes by identifying the number of students impacted by Hurricane Harvey. The following chart shows the Hurricane Harvey TSDS Crisis Code values used in 2017–18 data submissions.

TSDS Crisis Code Values

Crisis Code	Meaning
00	Student Was Not Affected By A Health Or Weather Related Crisis
5A	This specific code indicates a student was enrolled or was eligible to enroll in an LEA impacted by Hurricane Harvey, and the student enrolled in a different LEA during the 2017–2018 school year.
5B	This specific code indicates a student was enrolled or was eligible to enroll in an LEA impacted by Hurricane Harvey, and the student enrolled in another campus in the same LEA during the 2017–2018 school year.
5C	This specific code indicates a student is identified as homeless because of Hurricane Harvey but has remained enrolled in their home campus during the 2017–2018 school year.

TSDS Weekly Crisis Code Report Final Submission

On February 8, 2018, the commissioner announced final crisis code data needed to be submitted by March 9, 2018. Crisis code data submitted through March 9, 2018, in conjunction with other information submitted to TEA, is used to inform decisions related to the impact of Hurricane Harvey for the purpose of accountability adjustments.

Hurricane Harvey Provision

School districts, open-enrollment charter schools, and campuses directly affected by Hurricane Harvey will be eligible for special evaluation if they meet the following criteria.

Campuses

Campuses will be evaluated under the Hurricane Harvey Provision if they meet at least one of the following criteria:

a) The campus identified 10 percent or more of enrolled students in either the October snapshot data or in weekly crisis code reports finalized on March 9, 2018, with crisis codes 5A, 5B, or 5C. Campus enrollment is based on October snapshot data.

b) The campus reported 10 percent or more of its teachers experienced homelessness due to Hurricane Harvey, as reported in the Homeless Survey announced February 14, 2018.

c) The campus was reported to TEA as closed for ten or more instructional days due to Hurricane Harvey.

d) The campus was reported to TEA as displaced due to Hurricane Harvey either because the student population was relocated to another geographic location at least through winter break or the student population was required to share its own campus facility with the students of another campus closed as a direct result of Hurricane Harvey at least through winter break.

Under the Hurricane Harvey Provision, 2018 accountability data and ratings will be generated for eligible campuses using available data. If a campus meets at least one of the Hurricane Harvey criteria described above and receives an *Improvement Required* rating, the campus will be labeled *Not Rated*.

School Districts and Open-Enrollment Charter Schools

School districts and open-enrollment charter schools are eligible to be labeled *Not Rated* under the Hurricane Harvey Provision if all campuses within the school district or open-enrollment charter school are eligible for the Hurricane Harvey Provision.

Additionally, if 10 percent or more of the school district or open-enrollment charter school's students were reported on the October snapshot as enrolled in a campus eligible for the Hurricane Harvey Provision, the school district or open-enrollment charter school is eligible to be labeled *Not Rated*.

Under the Hurricane Harvey Provision, 2018 accountability data and ratings will be generated for eligible districts using available data. If a district or open-enrollment charter school meets at least one of the district and open-enrollment charter school Hurricane Harvey criteria described above and receives a *B, C, D,* or *F* rating, the district or open-enrollment charter school will be labeled *Not Rated*.

For purposes of counting consecutive years of ratings, 2017 and 2019 will be considered consecutive for school districts, open-enrollment charter schools, and campuses receiving a *Not Rated* label in 2018 due to hurricane-related issues.

Appeals

Any hurricane-affected school district, open-enrollment charter school, or campus not identified as eligible for this provision may appeal under the accountability appeals process. The commissioner-adopted criteria detailed in this chapter are final. Therefore, requests for exceptions to the rules for a school district, open-enrollment charter school, or campus are viewed unfavorably and will most likely be denied. See "Chapter 8—Appealing the Ratings."

Hurricane Harvey and the Public Education Grant (PEG) Program Campus List

Campuses receiving a *Not Rated* label in 2018 due to Hurricane Harvey provisions will be excluded from the list of 2019–20 PEG campuses released on August 15, 2018. For more information about the PEG program, please see Chapter 9 and the PEG webpage on the TEA website at https://tea.texas.gov/PEG.aspx.

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Capital Area Rural Transportation System

Publication of Notice: Open House for Proposed Eastside Bus Plaza

CARTS has sold its Austin Headquarters on East 6th Street. Since the mid-1990's this location has also served as the Austin Station where passengers transfer buses for destinations throughout CARTS 9-county service area. CARTS has been working with Capital Metro, the City of Austin and TxDOT on developing a new multimodal/bus plaza in East Austin. CARTS invites the community to an Eastside Bus Plaza project open house that will be held **August 14, 2018, 5:00 p.m. - 7:00 p.m. at Capital Metro HQ located at 2910 East 5th Street, Austin, Texas.** Attendees can take Metro Route 300 which stops at Pleasant Valley and 5th. There is also limited parking available on site. There will be a brief presentation starting at 6:00 p.m. Light refreshments will be served. The open house is an opportunity for the public to learn more about the project and provide comment on the proposed multimodal hub.

For more information, please contact (512) 478-RIDE (7433) or visit our website at RideCARTS.com.

TRD-201803265
David Marsh
General Manager
Capital Area Rural Transportation System
Filed: July 30, 2018

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - June 2018

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period June 2018 is $50.20 per barrel for the three-month period beginning on March 1, 2018, and ending May 31, 2018. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of June 2018, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period June 2018 is $2.11 per mcf for the three-month period beginning on March 1, 2018, and ending May 31, 2018. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2018, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of June 2018 is $67.32 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of June 2018, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of June 2018 is $2.94 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of June 2018, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be within the agency's authority to publish.

TRD-201803262
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: July 30, 2018

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/06/18 - 08/12/18 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 08/06/18 - 08/12/18 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.

TRD-201803296
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 31, 2018

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Texas Council for Developmental Disabilities

Request for Proposals: Texas Council for Developmental Disabilities New Initiatives

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to three organizations to implement New Initiatives Projects.

The purpose of offering funding for the projects described in this Request for Proposals (RFP) is to implement field-initiated projects that are consistent with TCDD's mission to "create change so that all people

with disabilities are fully included in their communities and exercise control over their own lives." Organizations that apply shall propose the goal of their projects and strategies they will use to meet their goal.

TCDD has approved funding up to $100,000 per organization, per year, for up to 4 years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at *www.DDSuite.org*. More information about TCDD may be obtained through TCDD's website at *www.tcdd.texas.gov*. All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at *Danny.Fikac@tcdd.texas.gov*. Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through *www.DDSuite.org* by October 26, 2018. Proposals will not be accepted after the due date.

TRD-201803300
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: July 31, 2018

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is September 11, 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 September 11, 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: AB Mini Mart, Incorporated dba AB Food and Gas; DOCKET NUMBER: 2018-0661-PST-E; IDENTIFIER: RN102984333; LOCATION: San Antonio, Bexar 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: $2,937; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: ACME BRICK COMPANY; DOCKET NUMBER: 2018-0174-AIR-E; IDENTIFIER: RN100221993; LOCATION: Malakoff, Henderson County; TYPE OF FACILITY: brick and clay tile manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 45073, Special Conditions Number 1, and Federal Operating Permit Number O1784, Special Terms and Conditions Number 8, by failing to comply with maximum allowable emissions rate; PENALTY: $15,000; Supplemental Environmental Project offset amount of $6,000; ENFORCEMENT COORDINATOR: Robyn Babyak, (512) 239-1853; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: C and J Well Services, Incorporated; DOCKET NUMBER: 2018-0503-AIR-E; IDENTIFIER: RN106220445; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: salt water disposal facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $1,187; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: C-A Round Rock Holdings, Incorporated and Airco Mechanical, Ltd.; DOCKET NUMBER: 2018-0589-MLM-E; IDENTIFIER: RN109267468; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: commercial air-conditioning and heating services facility; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Program plan prior to commencement of regulated activity over the Edwards Aquifer Recharge Zone; and 30 TAC §327.5(a), by failing to immediately abate and contain a spill of petroleum product or used oil; PENALTY: $24,563; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: CENTERVILLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0459-PWS-E; IDENTIFIER: RN101439818; LOCATION: Groveton, Trinity 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 milligram per liter for total trihalomethanes based on the locational running annual average; PENALTY: $420; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Arp; DOCKET NUMBER: 2018-0169-PWS-E; IDENTIFIER: RN101209732; LOCATION: Arp, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(1)(A)(ii) and (i)(7), by failing to perform and submit a corrosion control study to identify optimal corrosion

control treatment for the system within 12 months after the end of the January 1, 2016 - December 31, 2016, monitoring period in which the system exceeded the copper action level; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director along with certification that the consumer notification had been distributed for the January 1, 2017 - June 30, 2017, monitoring period; and 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of seven million fibers per liter for asbestos based on the running annual average; PENALTY: $1,142; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Goodrich; DOCKET NUMBER: 2018-0347-MWD-E; IDENTIFIER: RN101917649; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination Permit Number WQ0012711001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,050; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: City of Roscoe; DOCKET NUMBER: 2018-0434-PWS-E; IDENTIFIER: RN101430924; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; and 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the executive director for the July 1, 2017 - December 31, 2017, monitoring period; PENALTY: $796; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Toyah; DOCKET NUMBER: 2017-1431-PWS-E; IDENTIFIER: RN101225001; LOCATION: Toyah, Reeves County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of each public notification to the executive director (ED) regarding the failure to conduct routine coliform monitoring during the month of June 2015; 30 TAC §290.110(e)(2) and (6) and §290.111(h)(2)(B) and (9), by failing to submit a Surface Water Monthly Operating Report with the required turbidity and disinfectant residual data to the ED by the tenth day of the month following the end of the reporting period for April and May 2017; 30 TAC §290.117(i)(6) and (j), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2016 - December 31, 2016, monitoring period; and 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of each public notification to the ED regarding the non-acute surface water treatment technique violation during the month of April 2016; PENALTY: $420; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: Costco Wholesale Corporation dba Costco Gasoline 489; DOCKET NUMBER: 2018-0343-PST-E; IDENTIFIER: RN102255312; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: $22,500; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: CYPRESS VALLEY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0282-PWS-E; IDENTIFIER: RN101436616; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2017 - June 30, 2017, and July 1, 2017 - December 31, 2017, monitoring periods; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2016 - December 31, 2016, monitoring period, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2016 - December 31, 2016, monitoring period; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2013 - December 31, 2015, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2017 - June 30, 2017, monitoring period; 30 TAC §§290.272, 290.273, and 290.274(a) and (c), by failing to meet the adequacy requirements of the Consumer Confidence Report distributed to the customers of the facility for calendar year 2016; and 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on May 21, 2014, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the three active groundwater sources in use at the time the distribution coliform-positive samples were collected; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2018-0071-AIR-E; IDENTIFIER: RN100216613; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O2449, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 8, and New Source Review (NSR) Permit Number 3131A, Special Conditions (SC) Number 11, by failing to maintain the combustion chamber temperature at or above 1,190 degrees Fahrenheit when waste gas is being fed into the oxidizer for the acid gas incinerator, Emission Point Number (EPN) INCIN1, and failing to maintain the exhaust oxygen concentration at or above 5.0% for the Acid Gas Incinerator, EPN INCIN1; 30 TAC §106.6(b) and §122.143(4), THSC, §382.085(b), FOP Number O2449, GTC and STC Number 8, and

Permit By Rule Registration Number 107545, by failing to comply with all representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O2449, GTC, by failing to report all instances of deviations; PENALTY: $76,472; Supplemental Environmental Project offset amount of $38,236; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: DIXIE GAS STATION, INCORPORATED; DOCKET NUMBER: 2017-0689-PST-E; IDENTIFIER: RN101953925; LOCATION: Addison, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to maintain all spill prevention devices in good operating condition; and 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $11,275; ENFORCEMENT COORDINATOR: James Baldwin, (512) 585-5423; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Hermann Sons Life; DOCKET NUMBER: 2018-0462-PWS-E; IDENTIFIER: RN101256816; LOCATION: Comfort, Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: $50; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Jack A. Nelson; DOCKET NUMBER: 2018-0510-PST-E; IDENTIFIER: RN101810422; LOCATION: Atlanta, Cass County; TYPE OF FACILITY: aviation refueling facility; 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: $3,375; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Joe D. Leggett, Jr. dba Alvin Greenwaste Recycling; DOCKET NUMBER: 2018-0290-MSW-E; IDENTIFIER: RN109841411; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: recycling center; RULE VIOLATED: 30 TAC §328.5(b), by failing to submit a notice of intent prior to the commencement of recycling activities; PENALTY: $7,650; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Johnny D. Gravis, Katherine Gravis, Helen Ainsworth, Joan Martin Gravis, and William Roy Gravis; DOCKET NUMBER: 2018-0384-PST-E; IDENTIFIER: RN101780500; LOCATION: Evadale, Jasper County; TYPE OF FACILITY: inactive underground storage tank (UST); RULES VIOLATED: 30 TAC §334.50(a) and §334.54(c)(2) and (d)(2), and TWC, §26.3475(a) and (c)(1), by failing to provide a release detection method capable of detecting any release from a temporarily out-of-service underground storage tank system that has not been emptied of all regulated substances, and failing to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; 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; and 30 TAC §334.7(d)(1)(A) and (3) and §334.54(e)(2), by failing to provide written notice to the agency of any changes or additional information concerning the UST system within 30 days from the date of the occurrence of the change or addition; PENALTY: $7,812; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Lake Livingston Water Supply Corporation; DOCKET NUMBER: 2018-0327-PWS-E; IDENTIFIER: RN105711907; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(b)(3), (c)(3), and (f)(5)(B) and Texas Health and Safety Code, §341.031, by failing to comply with the acute maximum residual disinfectant level for chlorine dioxide; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to conduct routine individual filter effluent turbidity data monitoring during the month of January 2017; and 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed certificate of delivery, to the ED regarding the failure to report low disinfection contact time for more than four consecutive hours during the month of October 2017; PENALTY: $4,417; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: Maria Teresa Nava dba 1015 Super Market; DOCKET NUMBER: 2018-0483-PST-E; IDENTIFIER: RN101680601; LOCATION: Progreso, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: Mirando City Water Supply Corporation; DOCKET NUMBER: 2018-0501-PWS-E; IDENTIFIER: RN101195360; LOCATION: Mirando City, Webb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015, monitoring period; PENALTY: $455; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(21) COMPANY: Oldcastle Materials Texas, Incorporated; DOCKET NUMBER: 2018-0330-MLM-E; IDENTIFIER: RN110053246; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: road construction and maintenance facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §335.4(1), by failing to prevent the unauthorized discharge of industrial waste into or adjacent to water in the state; PENALTY: $37,500; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (254) 751-0335.

(22) COMPANY: PERRIN WATER SYSTEMS, INCORPORATED; DOCKET NUMBER: 2017-1541-PWS-E; IDENTIFIER:

RN102681897; LOCATION: Perrin, Jack County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(1)(A) and TCEQ Agreed Order Docket Number 2013-0903-MLM-E, Ordering Provision Number 2.a.ii, by failing to inspect the facility's three ground storage tanks (GSTs) annually; 30 TAC §290.46(m)(1)(B) and TCEQ Agreed Order Docket Number 2013-0903-MLM-E, Ordering Provision Number 2.a.iii, by failing to inspect the interior of the facility's pressure tank at least once every five years; 30 TAC §290.46(n)(3) and TCEQ Agreed Order Docket Number 2013-0903-MLM-E, Ordering Provision Number 2.e.ii, by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.45(b)(1)(C)(i), Texas Health and Safety Code, §341.0315(c), and TCEQ Agreed Order Docket Number 2013-0903-MLM-E, Ordering Provision Number 2.g.ii, by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; 30 TAC §290.43(c)(2) and (10), and TCEQ Agreed Order Docket Number 2013-0903-MLM-E, Ordering Provision Number 2.g.iii, by failing to meet current American Water Works Association design and construction standards on the facility's three GSTs; 30 TAC §290.41(c)(3)(B) and TCEQ Order Docket Number 2013-0903-MLM-E, Ordering Provision Number 2.g.iv, by failing to extend the well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants in the well; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(f)(2) and (3)(E)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m)(1)(B) and TCEQ Agreed Order Docket Number 2013-0903-MLM-E, Ordering Provision Number 2.a.iii, by failing to inspect the facility's pressure tank annually; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay public health service fees and associated late fees for TCEQ Financial Administration Account Number 91190005 for Fiscal Year 2017; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12196 for calendar years 2015 - 2017; PENALTY: $8,329; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: Peter Wilfridus DeRidder dba DeRidder Dairy; DOCKET NUMBER: 2018-0024-AGR-E; IDENTIFIER: RN101522233; LOCATION: Iredell, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003290000, Special Provisions A.1, and TCEQ Agreed Order Docket Number 2016-0102-AGR-E, Ordering Provision Number 2.c., by failing to remove sludge from Retention Control Structure (RCS) Number 2 to meet the total required capacity within 180 days from the issuance date of TPDES Permit Number WQ0003290000 and provide final sludge measurements to the TCEQ Regional Office in Stephenville within 30 days; 30 TAC §321.39(g)(3) and TPDES Permit Number WQ0003290000, VII. Pollution Prevention Plan (PPP) Requirements A.6(c), by failing to collect carcasses within 24 hours of death and properly dispose of them within three days of death; 30 TAC §321.43(j)(5)(B) and TPDES Permit Number WQ0003290000, VII. PPP Requirements A.3(c)(2), by failing to maintain the drainage area to minimize ponding or puddling of water outside of the RCSs; 30 TAC §321.36(b) and TPDES Permit Number WQ0003290000, X. Special Provisions E., by failing to measure and record the sludge volume of each RCS in the PPP annually; 30 TAC §321.46(a)(7) and (d) and TPDES Permit Number WQ0003290000, VII. PPP Requirements A.1(a), by failing to maintain a PPP for the site upon issuance of the permit; 30 TAC §321.36(b) and TPDES Permit Number WQ0003290000, X. Special Provisions C., by failing to submit the annual report to the TCEQ Stephenville Regional Office by March 31 of each year for the 12-month reporting period of January 1 to December 31; 30 TAC §321.36(c) and TPDES Permit Number WQ0003290000, VII. PPP Requirements A.8(a), by failing to update the Nutrient Management Plan annually; 30 TAC §321.45(b) and TPDES Permit Number WQ0003290000, VII. PPP Requirements C.2., by failing to attend at least eight hours of continuing education in animal waste management or its equivalent for each two-year period; 30 TAC §321.36(b) and TPDES Permit Number WQ0003290000, X. Special Provisions M., by failing to remove solids from the settling basin so as to assure attainment of the 50% designed removal efficiency; and 30 TAC §321.36(b) and TPDES Permit Number WQ0003290000, VII. PPP Requirements B.7, by failing to maintain crops, vegetation, forage growth or post-harvest residues in pastures containing animals; PENALTY: $29,232; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 580-D West Lingleville Road, Stephenville, Texas 76401-2209, (254) 552-1900.

(24) COMPANY: Richard and Helen Buckner dba Oak Ridge Mobile Home Park; DOCKET NUMBER: 2018-0295-MWD-E; IDENTIFIER: RN106479967; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.42(a) and TWC, §26.121(a)(1), by failing to obtain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: SI Group, Incorporated; DOCKET NUMBER: 2017-1144-AIR-E; IDENTIFIER: RN100218999; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§116.115(b)(2)(F) and (c), 116.116(a)(1), and 122.143(4), New Source Review (NSR) Permit Number 2341, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1431, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the representations with regard to construction plans and operation procedures in an application for a permit; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(2), NSR Permit Number 2341, SC Number 4.B, FOP Number O1431, GTC and STC Numbers 1.A and 11, and THSC, §382.085(b), by failing to operate a flare with a flame present at all times and/or a constant pilot flame; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O1431, GTC, by failing to report all instances of deviations; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 84092, SC Numbers 2, 6, 7.B.(3), and 8.D, FOP Number O1431, GTC and STC Number 11, and THSC, §382.085(b), by failing to maintain records for planned maintenance, startup, and shutdown activities; PENALTY: $39,857; Supplemental Environmental Project offset amount of $19,928; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: ST. PAUL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0640-PWS-E; IDENTIFIER: RN101192748; LOCATION: St. Paul, San Patricio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC

§290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) by the tenth day of the month following the end of each quarter for the second quarter of 2017; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2017 - June 30, 2017, monitoring period; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2016 - December 31, 2016, monitoring period, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2016 - December 31, 2016, monitoring period; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2013 - December 31, 2015, monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the calendar years 2014 and 2015; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR to the ED by the tenth day of the month following the end of each quarter for the second and fourth quarters of 2016; PENALTY: $1,070; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(27) COMPANY: Suncot Gin, LLC; DOCKET NUMBER: 2017-0410-AIR-E; IDENTIFIER: RN102213063; LOCATION: Denver City, Yoakum County; TYPE OF FACILITY: cotton gin; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions from impacting off-property receptors; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(28) COMPANY: TEXAS BOYS RANCH, INCORPORATED; DOCKET NUMBER: 2018-0407-PWS-E; IDENTIFIER: RN101178218; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at the facility's entry point and the required distribution sample site, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2017 - June 30, 2017, and July 1, 2017 - December 31, 2017, monitoring periods; 30 TAC §290.117(f)(1)(A)(ii) and (i)(7) and §290.122(b)(2)(A) and (f), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the January 1, 2016 - December 31, 2016, monitoring period in which the system exceeded the lead action level, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to perform and submit a corrosion control study; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015, monitoring period; PENALTY: $480; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(29) COMPANY: TEXOMA C STORE INCORPORATED dba Stop N Shop; DOCKET NUMBER: 2018-0416-PST-E; IDENTIFIER: RN102440484; LOCATION: Sherman, Grayson 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; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $3,724; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: WESTBOUND WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0192-PWS-E; IDENTIFIER: RN101195733; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes based on the locational running annual average; 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids, based on the locational running annual average; and 30 TAC §290.117(n), by failing to comply with the additional sampling requirements as required by the executive director to ensure that minimal levels of corrosion are maintained in the distribution system; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201803293
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 31, 2018

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Enforcement Orders

An agreed order was adopted regarding City of Joaquin, Docket No. 2016-2058-PWS-E on July 31, 2018, assessing $1,923 in administrative penalties with $384 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of La Grulla, Docket No. 2017-0255-PWS-E on July 31, 2018, assessing $3,955 in administrative penalties with $791 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Waller, Docket No. 2017-0334-MWD-E on July 31, 2018, assessing $3,125 in administrative penalties with $625 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Goodlow, Docket No. 2017-0453-PWS-E on July 31, 2018, assessing $610 in administrative

penalties with $122 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CENTERLINE WATER SUPPLY CORPORATION, Docket No. 2017-0631-PWS-E on July 31, 2018, assessing $2,674 in administrative penalties with $529 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hempstead Yogi, Ltd., Docket No. 2017-0681-MLM-E on July 31, 2018, assessing $3,375 in administrative penalties with $747 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding IRA WATER SUPPLY CORPORATION, Docket No. 2017-1088-PWS-E on July 31, 2018, assessing $187 in administrative penalties with $37 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SIESTA SHORES WATER CONTROL AND IMPROVEMENT DISTRICT, Docket No. 2017-1103-PWS-E on July 31, 2018, assessing $267 in administrative penalties with $53 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cecil Alfred Redford dba Lakehills Homestead and RV Park and Linda Carol Redford dba Lakehills Homestead and RV Park, Docket No. 2017-1146-PWS-E on July 31, 2018, assessing $2,843 in administrative penalties with $568 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding VISION TOP SOIL LLC, Docket No. 2017-1546-MSW-E on July 31, 2018, assessing $1,275 in administrative penalties with $255 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AAZ LLC dba Fair Ave Shell, Docket No. 2017-1579-PST-E on July 31, 2018, assessing $6,552 in administrative penalties with $1,310 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CRANE CO., Docket No. 2017-1631-PWS-E on July 31, 2018, assessing $275 in administrative penalties with $55 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Comanche County Water Supply Corporation, Docket No. 2017-1646-PWS-E on July 31, 2018, assessing $53 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Loving County, Docket No. 2017-1662-PWS-E on July 31, 2018, assessing $862 in administrative penalties with $172 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Peters, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Manuel Morales, Docket No. 2017-1726-MLM-E on July 31, 2018, assessing $4,750 in administrative penalties with $950 deferred. Information concerning any aspect of this order may be obtained by contacting Jonathan Nguyen, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Texline, Docket No. 2018-0006-PWS-E on July 31, 2018, assessing $568 in administrative penalties with $113 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAVARRO MILLS WATER SUPPLY CORPORATION, Docket No. 2018-0019-PWS-E on July 31, 2018, assessing $777 in administrative penalties with $155 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PAYNE SPRINGS WATER SUPPLY CORPORATION, Docket No. 2018-0101-PWS-E on July 31, 2018, assessing $62 in administrative penalties with $12 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GEJAR, LLC, Docket No. 2018-0113-EAQ-E on July 31, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 2226 Properties, LLC, Docket No. 2018-0153-EAQ-E on July 31, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding David E. Zieske, Jr., Docket No. 2018-0475-WOC-E on July 31, 2018, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Talk O Texas Brands, Inc., Docket No. 2018-0600-WQ-E on July 31, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement

Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding Jerry Durant, Docket No. 2018-0629-WR-E on July 31, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding WildHorse Resources Management Company, LLC, Docket No. 2018-0641-WR-E on July 31, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding Daryl Gregg, Docket No. 2018-0645-WQ-E on July 31, 2018, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding City of Mexia, Docket No. 2018-0662-WQ-E on July 31, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Abstract Contractors, LLC, Docket No. 2018-0670-WQ-E on July 31, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding CUSTOM DESIGN SERVICES, INC., Docket No. 2018-0694-WQ-E on July 31, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Steven D. Miller, Docket No. 2018-0703-OSI-E on July 31, 2018, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Craig A. Doreck, Docket No. 2018-0706-WQ-E on July 31, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201803330
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2018

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 152430

APPLICATION. Centex Materials LLC, 3019 Alvin Devane Boulevard, Building 1, Suite 100, Austin, Texas 78741-7419 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 152430 to authorize the operation of a concrete batch plant. The facility is proposed to be located at the following driving directions: from Farm-to-Market Road 3405 and Ronald Reagan Boulevard, go north on Ronald Reagan Boulevard 1.0 mile and the site will be on the left, Georgetown, Williamson County, Texas 78633. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.72&lng=-97.845277&zoom=13&type=r. This application was submitted to the TCEQ on June 21, 2018. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on July 12, 2018.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/agency/comments.html. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts: an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, September 17, 2018, at 6:00 p.m.

Georgetown Event Center

1 Chamber Way

Georgetown, Texas 78626

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all com-

ments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Bldg A, Rm 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Centex Materials LLC, 3019 Alvin Devane Boulevard, Building 1, Suite 100, Austin, Texas 78741-7419, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: July 25, 2018

TRD-201803313
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2018

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant With Enhanced Controls Proposed Air Quality Registration Number 152632

APPLICATION. Lauren Concrete Inc, 2001 Picadilly Drive, Round Rock, Texas 78664-9511 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 152632 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 4901 West Highway 290, Dripping Springs, Hays County, Texas 78620. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.193888&lng=-98.176666&zoom=13&type=r. This application was submitted to the TCEQ on July 3, 2018. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on July 12, 2018.

PUBLIC COMMENT/PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/agency/comments.html. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, September 10, 2018, at 6:30 p.m.

Dripping Springs High School (Cafeteria)

940 Highway 290 West

Dripping Springs, Texas 78620

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle Bldg A Rm 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en Español, puede llamar al (800) 687-4040.

Further information may also be obtained from Lauren Concrete, Inc., 2001 Picadilly Drive, Round Rock, Texas 78664-9511, or by calling Mr. Paul W. Henry P.E., Principal Engineer, Henry Environmental Services at (512) 281-6555.

TRD-201803321
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2018

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Notice of Hearing Guadalupe-Blanco River Authority

SOAH Docket No. 582-18-4649

TCEQ Docket No. 2016-0530-WR

Certificate of Adjudication No. 18-3863C

APPLICATION.

Guadalupe-Blanco River Authority (GBRA or Applicant), 933 East Court Street, Seguin, Texas 78155, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Certificate of Adjudication pursuant to Texas Water Code (TWC)

§§11.122 and 11.085, and TCEQ Rules Title 30 Texas Administrative Code (TAC) §295.1, et seq.

GBRA seeks an amendment to Certificate of Adjudication No. 18-3863 to add mining and domestic use to its authorized water; to add an additional place of use for the authorized water in DeWitt, Gonzales, Guadalupe, and Comal counties; to add an exempt interbasin transfer to those portions of Gonzales, DeWitt, Guadalupe, and Comal counties in the San Antonio and Lavaca River Basins and the Lavaca-Guadalupe Coastal Basin; and to add a 247-mile diversion segment on the Guadalupe River, Guadalupe River Basin.

GBRA owns a portion of Certificate of Adjudication No. 18-3863 (Certificate) which authorizes the diversion and use of not to exceed 3,000 acre-feet of water per year from the perimeter of a reservoir, created by the Salt Water Barrier and Diversion Dam owned by GBRA and authorized by Certificate of Adjudication No. 18-5484, on the Guadalupe River, Guadalupe River Basin, at a maximum combined diversion rate of 18.05 cfs (8,100 gpm), for municipal, industrial, and agricultural purposes in Victoria, Calhoun, and Refugio counties, within the Guadalupe, San Antonio, and Lavaca River Basins and the San Antonio-Nueces and Lavaca-Guadalupe Coastal Basins. The priority date for this right is March 1, 1951.

Applicant seeks to amend its portion of Certificate of Adjudication No. 18-3863 to add mining and domestic use to its authorized water; to add an additional place of use for the authorized water in Gonzales, DeWitt, Guadalupe, and Comal counties; to add an exempt interbasin transfer to those portions of Gonzales, DeWitt, Guadalupe, and Comal counties in the San Antonio and Lavaca River Basins, and the Lavaca-Guadalupe Coastal Basin.

Applicant further seeks to add a 247-mile diversion segment beginning at the intersection of the Guadalupe River and Interstate Highway (IH) 35 in Comal County and extending downstream to the GBRA's Saltwater Barrier and Diversion Dam located in Calhoun and Refugio counties.

The proposed upper limit of the diversion segment is located at a point on the Guadalupe River approximately 1.35 miles southeast of New Braunfels, Texas, bearing S 3° W, 1,943.77 feet from the north corner of the J. Thompson Survey, Abstract No. 608, also being Latitude 29.692717° N, Longitude 98.107794° W, in Comal County.

The proposed lower limit of the diversion segment is located at a point on the Guadalupe River at GBRA's Saltwater Barrier and Diversion Dam approximately 3.5 miles north of Tivoli, Texas, bearing S 78° E, 930 feet from the northwest corner of the Silas Hulse Survey, Abstract No. 167, also being Latitude 28.505828° N and Longitude 96.884162° W in Calhoun and Refugio counties.

The application and required fees were received on February 21, 2011. Additional information was received on May 20, 2011, April 25, 2012, August 13 and December 16, 2013, and April 25, June 30, and October 8, 2014. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 5, 2012.

The Executive Director has prepared a draft amendment, which, if approved, would contain special conditions, including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753.

CONTESTED CASE HEARING.

SOAH will conduct a preliminary hearing on this application at:

10:00 a.m. - August 29, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding will be similar to a civil trial in state district court.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 11, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

The applicant is automatically a party in this hearing. If anyone else wishes to be a party to the hearing, he or she must attend the hearing and show how he or she would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and any person may request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at http://www.tceq.texas.gov/.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: July 26, 2018

TRD-201803316
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2018

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Notice of Intent to Perform Removal Action at the Avinger Development Company Proposed State Superfund Site, Avinger, Cass County, Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ) issues this public notice of intent to perform a removal action, as provided by Texas Health and Safety Code, §361.133, for the Avinger Development Company proposed state Superfund site (the site). The site is located at 980 Highway 155 E, Avinger, Cass County, Texas. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site. The site was proposed for listing on the Texas Superfund Registry in the December 17, 1999, issue of the *Texas Register* (24 TexReg 11590).

Wood treatment operations were conducted at the site approximately from 1969 to 1972. The contaminants of concern at the site include arsenic, copper, and chromium. One or more of these contaminants have been found in soil and groundwater at the site.

The removal action will consist of the excavation of contaminated soils and waste materials. The removal action is appropriate to protect human health and the environment, can be completed without extensive investigation and planning, and will achieve a significant cost reduction for the site.

A portion of the records for the site is available for review during regular business hours at the Daingerfield Public Library, located at 207 Jefferson Street, Daingerfield, Texas 75638. The complete public file may be obtained during regular business hours at the TCEQ's Central File Room, Building E, Room 103, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-2900. Additional files may be obtained by contacting the TCEQ Project Manager for the site, Phylicia Allen, at (512) 239-2023. Fees are charged for photocopying file information. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E. Information is also available regarding the state Superfund program at: http://www.tceq.texas.gov/remediation/superfund/sites/.

TRD-201803294
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 31, 2018

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 11, 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 September 11, 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: Boy Scouts of America, Alamo Area Council, Inc.; DOCKET NUMBER: 2018-0137-PWS-E; TCEQ ID NUMBER: RN101278927; LOCATION: 125 Bear Scout Road West near Hunt, Kerr County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; PENALTY: $50; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: JAYALAKSHMI GROUP LLC dba Ice House; DOCKET NUMBER: 2017-1349-PST-E; TCEQ ID NUMBER: RN102354974; LOCATION: 1011 North Highway 123 Bypass, Seguin, Guadalupe County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; and 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: $9,101; 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.

(3) COMPANY: JVickers Enterprises LLC dba Country Boys; DOCKET NUMBER: 2016-0892-PST-E; TCEQ ID NUMBER: RN102429818; LOCATION: 20931 Texas Highway 11 East, Winnsboro, Hopkins 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 UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 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; PENALTY: $3,504; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: PEDERNALES ELECTRIC COOPERATIVE, INC. dba PEC Cedar Park District Office; DOCKET NUMBER: 2017-1739-PST-E; TCEQ ID NUMBER: RN101433605; LOCATION: 1949 West Whitestone Boulevard, Cedar Park, Williamson County; TYPE OF FACILITY: underground storage tank (UST) system and a fleet refueling facility; 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: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: Southwest Convenience Stores, LLC dba 7 Eleven 57410, dba 7 Eleven 57411, and dba 7 Eleven 57413; DOCKET NUMBER: 2016-1772-PST-E; TCEQ ID NUMBERS: RN102408812, RN102410446, and RN102408416; LOCATIONS: 8109 Indiana Avenue (Facility 1), 8126 University Avenue (Facility 2), and 4324 82nd Street (Facility 3), Lubbock, Lubbock County; TYPE OF FACILITIES: underground storage tank (UST) systems and convenience stores with retail sales of gasoline; RULES VIOLATED: (Facility 1) TWC, §26.3475(c)(1) and 30 TAC §334.50(a)(7) and §334.54(c)(2), by failing to monitor the out-of-service USTs that have not been emptied of all regulated substances for releases; 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 §334.54(b)(2), by failing to secure the Tank Number 2 access points to prevent access or vandalism by unauthorized persons; 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; (Facility 2) TWC, §26.3475(c)(1) and 30 TAC §334.50(a)(7) and §334.54(c)(2), by failing to monitor the out-of-service UST that has not been emptied of all regulated substances for releases; 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; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.45(c)(3)(A), by failing to securely anchor the emergency shutoff valves at the base of the dispensers; (Facility 3) 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; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; TWC, §26.3475(c)(1) and 30 TAC §334.50(a)(7) and §334.54(c)(2), by failing to monitor the out-of-service UST that has not been emptied of all regulated substances for releases; and TWC, §26.3475(c)(2) and 30 TAC §334.51(a)(6), by failing to ensure that all spill and overfill prevention devices are maintained in good working condition; PENALTY: $49,929; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201803291
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 31, 2018

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Notice of Opportunity to Comment on Default 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 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 **September 11, 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 authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 11, 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: Billy Jack Stone; DOCKET NUMBER: 2017-1627-WQ-E; TCEQ ID NUMBER: RN109832808; LOCATION: south of Bypass 312 at the end of Seneca Drive, Weatherford, Parker County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: TWC, §26.121, 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities under Texas Pollutant Discharge Elimination System General Permit Number TXR150000; PENALTY: $2,625; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: MENGHI ENTERPRISES INC dba Flash Mart; DOCKET NUMBER: 2017-0636-PST-E; TCEQ ID NUMBER: RN103136362; LOCATION: 6769 Abrams Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and (d)(4), 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); TWC, §26.3475(a) and 30 TAC §334.50(b)(2) and (A)(i)(III), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(d) and 30 TAC §334.49(a)(4), by failing to provide corrosion protection for all underground and/or totally or partially submerged metal components for a UST system; TWC, §26.3475(c)(2) and 30 TAC §334.42(i), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to ensure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; 30 TAC §334.602(a)(3) and §334.603(b)(2), by failing to comply with UST Class C operator training requirements for the station; 30 TAC §334.10(b)(2) and §334.51(c), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §115.221 and Texas Health and Safety Code, §382.085(b), by failing to control displace vapors from a stationary gasoline storage container located at a motor vehicle fuel dispensing station located in the Dallas-Fort Worth area; 30 TAC §115.225, by failing to conduct the annual testing of the Stage I equipment; and TWC, §26.3475(c)(2) and 30 TAC §334.51(a)(6), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; PENALTY: $52,555; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Michele Audrey Shackelford dba Shelcon Services; DOCKET NUMBER: 2017-0159-MLM-E; TCEQ ID NUMBER: RN104422282; LOCATION: Farm-to-Market Road 1187 and Mustang Creek, Tarrant County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §11.1272(c) and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.46(n)(2), by failing to provide an accurate and

up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.44(d)(6), by failing to provide all dead-end mains with acceptable flush valves and discharge piping; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.45(b)(1)(C)(i), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.43(c)(1), by failing to equip the facility's ground storage tank (GST) roof vent with a 16-mesh or finer corrosion-resistant screen to prevent entry of animals, birds, insects, and heavy air contaminants; 30 TAC §290.46(m)(1)(A), by failing to inspect each of the facility's two GSTs annually by water system personnel or a contracted inspection service; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the facility's two wells; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's two wells; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(f)(2), (3)(A)(iii), (D)(vii) and (E)(iv), by failing to maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; THSC, §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to customers of the facility within 24 hours of the failure to maintain adequate chlorine residuals using the prescribed notification format as specified in 30 TAC §290.47(c); PENALTY: $2,262; 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.

TRD-201803292
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 31, 2018

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Notice of Public Meeting on September 20, 2018, in Palacios, Matagorda County, Texas concerning the Hu-Mar Chemicals Proposed State Superfund Site

The purpose of the meeting is to obtain additional information regarding the facility and the identification of additional potentially responsible parties as well as public input concerning the proposed remedy for the site.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or agency) is issuing this public notice of the proposed remedy for the Hu-Mar Chemicals proposed state Superfund site (the site). In accordance with 30 Texas Administrative Code §335.349(a), concerning requirements for remedial activities, and Texas Health and Safety Code, §361.187, concerning proposed remedial action, a public meeting regarding the ED's selection of a proposed remedy for the site shall be held. This notice will also be published in the *Palacios Beacon* on August 8, 2018. **The public meeting will be held on September 20, 2018, at 6:00 p.m., at the Palacios City Council Chambers, located at 311 Henderson, Palacios, Texas.** The public meeting is not a contested case hearing under Texas Government Code, Chapter 2001.

The site was proposed for listing on the state registry of Superfund sites in the January 28, 2000, issue of the *Texas Register* (25 TexReg 622). The site, including all land, structures, appurtenances, and other improvements, is located on McGlothlin Road between 4th and 12th Streets, west of State Highway 35, and immediately north of the City of Palacios in Matagorda County, Texas. The site consists of an 18-acre tract of vacant land enclosed by a chain link security fence.

The facility was constructed by the Consolidated Chemical Company for pesticide and herbicide production and purchased by Hu-Mar Chemical Inc. (Hu-Mar). Operations at the Hu-Mar facility included manufacturing and handling of herbicides and their precursors and by-products, including thiocarbamates and phosgene gas, as well as disposal of the by-products of herbicide manufacturing and other wastes generated at the site. In 1980, a temporary injunction was brought by the State of Texas against Hu-Mar for the improper storage of several hundred deteriorating drums containing unknown materials and operations ceased. After the facility closed, Hu-Mar conducted removal activities with the State's concurrence in 1980 and 1985. These removal activities included demolition of an old brick kiln, off-site disposal of drums and contaminated soil underlying the kiln, removal of phosgene gas cylinders and on-site tanks, and closure of the on-site surface impoundments. In 1999, the State conducted an investigation of remaining contaminants at the site and documented hazardous substances in groundwater as a result of the pesticide production. The Remedial Investigation and Focused Feasibility Study were conducted by the TCEQ from 2000 through 2018.

The Focused Feasibility Study, dated May 2018, screened and evaluated remedial alternatives which could be used to remediate the soil and groundwater at the site. It developed several alternatives for remediation of soil and groundwater according to the Texas Risk Reduction Program (TRRP) rules. The Proposed Remedial Action Document, dated July 2018, presents the proposed remedy and describes the evaluation process that was used to choose the proposed remedy. The TCEQ proposed remedy is as follows:

Proposed Soil Remedial Action: Off-site soils that exceed groundwater protective concentration levels (PCLs) will be excavated and disposed of at an appropriate off-site disposal facility. On-site soil that exceeds groundwater PCLs will be managed within a groundwater Plume Management Zone (PMZ) and will not require additional remedial activities.

Proposed Groundwater Remedial Action: An on- and off-site PMZ will be implemented, with limited in-situ chemical oxidation treatment. The PMZ will be established with institutional controls filed in county real property records in accordance with TRRP. Institutional controls will remain in place until it is demonstrated that chemicals of concern in groundwater no longer exceed the applicable PCLs.

Comments:

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. on September 19, 2018, **and should be sent in writing** to Zoe Lipowski, Project Manager, TCEQ Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087, or by facsimile to (512) 239-2450. The public comment period for this action will end at the close of the public meeting on September 20, 2018. Please be aware that any contact information you provide, including

your name, phone number, email address, and physical address will become part of the agency's public record.

A portion of the record for the site, including documents pertinent to the proposed remedy, is available for review during regular business hours at the Palacios Library, located at 326 Main Street, Palacios, Texas 77465. Copies of the complete public record file may be obtained during business hours at the TCEQ's Central File Room, Building E, Room 103, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-2900 or (800) 633-9363. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E. Information is also available regarding the state Superfund program at *www.tceq.texas.gov/remediation/superfund/state/humar.html.*

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-5906. Requests should be made as far in advance as possible.

For further information about the site or the public meeting, please call John Flores, TCEQ Community Relations Liaison, at (800) 633-9363.

TRD-201803289
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 31, 2018

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Notice of Public Meetings for a Pending Section 401 Water Quality Certification Decision on the Dallas to Houston High Speed Rail Project U.S. Army Corps of Engineers Section 404 Permit Application No. SWF-2011-00483 and SWG-2014-00412

The following notices were issued on July 19, 2018.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

AZTEX DAIRY, INC for a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004844000, for a Concentrated Animal Feeding Operation, to authorize the applicant to combine land management units (LMUs): LMU #3 - 12 acres and LMU #12 - 15 acres to form a new LMU #12 - 27 acres; and reconfigure LMU #10 - 26 acres to form a new LMU #3 - 12 acres and LMU #10 - 14 acres. In addition, Wells #3, #4, #8 and #10 have been renamed as PW3, CW4, PW8 and PW10, respectively. The status of Well #4 (now well CW4) has changed from "to be plugged" to "plugged." The currently authorized maximum capacity of 2,300 head, of which 1,000 head are milking cows, and the total land application area of 390 acres remain unchanged. The facility is located on the south side of Farm-to-Market Road 2156, approximately one mile west of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 2156, Dublin in Erath County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201803327
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2018

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Notice of Water Quality Application

The following notices were issued on July 19, 2018.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

AZTEX DAIRY, INC for a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004844000, for a Concentrated Animal Feeding Operation, to authorize the applicant to combine land management units (LMUs): LMU #3 - 12 acres and LMU #12 - 15 acres to form a new LMU #12 - 27 acres; and reconfigure LMU #10 - 26 acres to form a new LMU #3 - 12 acres and LMU #10 - 14 acres. In addition, Wells #3, #4, #8 and #10 have been renamed as PW3, CW4, PW8 and PW10, respectively. The status of Well #4 (now well CW4) has changed from "to be plugged" to "plugged." The currently authorized maximum capacity of 2,300 head, of which 1,000 head are milking cows, and the total land application area of 390 acres remain unchanged. The facility is located on the south side of Farm-to-Market Road 2156, approximately one mile west of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 2156, Dublin in Erath County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en Español, puede llamar al (800) 687-4040.

TRD-201803331
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2018

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SECOND REVISED Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40294

MedCare Environmental Solutions, Inc. P.O. Box 21106, Amarillo, Texas 79114, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40294, to construct and operate a Medical Waste Processing Facility. The proposed facility, MedCare Environmental Solutions, will be located at 9119 Billy The Kid Street, El Paso, Texas 79907, in El Paso County. The Applicant is requesting authorization to store, treat and transfer medical waste. The registration application is available for viewing and copying at the Rio Grande Council of Governments, 8037 Lockheed, Suite 100, El Paso, Texas 79925 and may be viewed online at www.medcareenvironmental.com. 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/in-

dex.html?lat=31.698244&lng=-106.320483&zoom=13&type=r. For exact location, refer to application. After review, it was determined that the Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration was not provided according to 30 Texas Administrative Code §326.73.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the Executive Director if requested by a member of the Legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. 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 Executive Director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 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.

Executive Director Action. The Executive Director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the Executive Director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the Executive Director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www14.tceq.texas.gov/epic/eComment/. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Further information may also be obtained from MedCare Environmental Solutions, Inc. at the address stated above or by calling Mr. Nord Sorensen at (806) 355-3035.

TRD-201803332
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 1, 2018

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Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft July 2018 Update to the WQMP for the State of Texas.

Download the draft July 2018 WQMP Update at *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on September 11, 2018.**

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201803290
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 31, 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 Sue Edwards at (512) 463-5800.

Deadline: Personal Financial Statement due November 27, 2017

Antonio "Tony" Abad, 2122 Colcord Ave, Waco, Texas 76707

Deadline: Personal Financial Statement due February 12, 2018

Spencer R. Bounds, 2408 Wydewood Drive, Midland, Texas 79707

Mathew S. Pina, 10907 Lisbon, San Antonio, Texas 78213

Deadline: Personal Financial Statement due April 30, 2018

Antonio "Tony" Abad, 2122 Colcord Ave, Waco, Texas 76707

Deadline: Semiannual Report due July 17, 2017, for Committees

Dustin C. Mitchell, LIBERTY AND JUSTICE PAC, 9761 Snowberry Dr., Frisco, Texas 75035

Deadline: Semiannual Report due January 16, 2018, for Committees

Dustin C. Mitchell, LIBERTY AND JUSTICE PAC, 9761 Snowberry Dr., Frisco, Texas 75035

TRD-201803202
Seana Willing
Executive Director
Texas Ethics Commission
Filed: July 26, 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 July 16 through July 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 web site. The notice was published on the web site on Friday, August 3, 2018. The public comment period for this project will close at 5:00 p.m. on Saturday, September 1, 2018.

FEDERAL AGENCY ACTIVITIES:

Applicant: United States Army Corps of Engineers

Project Description: Port Arthur and Vicinity Hurricane Flood Protection Project (HFPP): The pumping station repairs would occur primarily to equipment located inside those facilities and would not require new impacts or construction outside of the current pumping station footprints. These repairs would require the delivery and installation of replacement equipment. This work would utilize existing parking facilities at each pumping station. The levee embankment slide areas range from approximately 100 to 600 feet in length. Each of the five levee repair areas would not require impacts beyond the existing levee template or toe. The levee embankment slide areas mostly consist of minor shallow sloughing areas. Repairs would primarily impact maintained grasslands associated with the levee. Borrow material would be from a commercial source. Access and haul routes would utilize existing roads and the roads on top of the levee itself.

Freeport and Vicinity HFPP: The pumping station repair would occur primarily to equipment located inside those facilities and would not require new impacts or construction outside of the current pumping station footprint. These repairs would require the delivery and installation of replacement equipment. This work would utilize existing parking facilities at the pumping station. The levee embankment damages are located at two locations: the East Bank of the Brazos River, and along Oyster Creek. According to photographs in the PIR and information provided by the USACE Project Engineer, repairs would consist of adding riprap and fill material along the base or toe of the levee. Borrow material would be from a commercial source. Access and haul routes would utilize existing roads and the roads on top of the levee itself.

Texas City and Vicinity HFPP: The repair at the inlet area of the Moses Lake Floodgate structure would consist of placement of riprap on the Galveston Bay side of the floodgate structure because of scouring that occurred during Hurricane Harvey. Two levee areas would be repaired, including an approximately 1.4 mile long section and a 0.32 mile long section, each located on the northern part of the project adjacent to Galveston Bay. The levee repairs would consist of adding riprap and fill material along the base or toe of the levee. Borrow material would be from a commercial source. Access and haul routes would utilize existing roads and the roads on top of the levee itself.

CMP Project No.: 18-1281-F2

Applicant: United States Army Corps of Engineers

Project Description: The U.S. Army Corps of Engineers, Galveston District in partnership with Jefferson County and Sabine Neches Navigation District, is reviewing restoration opportunities in Jefferson County and focuses in on coastal marsh habitats along the Gulf of Mexico. The feasibility study will help contribute to larger ongoing efforts to improve, preserve, and sustain ecological resources along the Texas coast by stakeholder groups, non-governmental organizations, and government agencies at the local, state, and federal level. The tentatively selected plan incorporates marsh and Gulf Intracoastal Waterway (GIWW) shoreline restoration features which are critical to the stabilization and sustainment of the critical marsh resources now and into the future. Marsh measures consist of marsh restoration and/or nourishment to increase land coverage in the area and improve terrestrial wildlife habitat, hydrology, water quality, and fish nurseries. Shoreline measures include construction of rock breakwater features that would mitigate some effects of ship wake induced erosion along the GIWW. The structures dissipate wave energies, stabilize shorelines, reduce land loss, reduce saltwater intrusion, and support reestablishment of emergent marsh along the GIWW shoreline through retention of sediments. Projects would be constructed on lands owned by Texas Parks and Wildlife Department (JD Murphree Wildlife Management Area), US Fish and Wildlife Service (McFaddin National Wildlife Refuge), and private lands.

CMP Project No.: 18-1266-F2

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation-Beaumont District

Location: Wetlands adjacent to Mayhaw Bayou

Latitude & Longitude (NAD 83): 29.825757, -94.343197

Project Description: The applicant proposes to permanently discharge 3,755 cubic yards of fill material into 0.74 acre of palustrine forested (PFO), 0.04 acre of palustrine scrub/shrub (PSS) wetlands, and 2,125 linear feet of intermittent roadway ditches, during the roadway improvements along SH 73.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00287. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

CMP Project No: 18-1263-F1

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-201803309
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: August 1, 2018

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Texas Health and Human Services Commission

Public Notice: Request for Exemption to Medicaid Recovery Audit Contractor Medical Director and Three Year Look-Back Period Requirements

The Texas Health and Human Services Commission announces its intent to submit transmittal number 18-0017 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective August 15, 2018.

The purpose of this amendment is to request two exemptions to 42 CFR §455.508:

1) 1.0 Full-Time Equivalent Medical Director Requirement

2) Three Year Look-Back Period Requirement

Specifically, the State is requesting an exemption to 42 CFR §455.508(b) to allow the State's recovery audit contractor to maintain and utilize a panel of physicians with a variety of specialties, including a contracted physician with a Texas license, in lieu of hiring a minimum of 1.0 full-time equivalent Medical Director who is licensed to practice in the State. The panel approach allows reviews to be conducted by physicians with medical specialties that align with the specialty under review. Requiring the State's recovery audit contractor to have a 1.0 full-time equivalent Medical Director licensed to practice in Texas is not cost-effective, as there is not sufficient work to sustain a full-time Medical Director for the State. The panel approach not only improves the effectiveness of the reviews, but also ensures the best use of resources by the State's recovery audit contractor.

The State is also requesting an exemption to 42 CFR §455.508(f) to allow the State's recovery audit contractor to review claims that are up to five years old, with the start date being the date the claim was submitted to the State or one of its agents. Extending the look-back period to five years (from the current three-year period) will enable the recovery audit contractor to operate within limitations that are consistent with state Medicaid guidelines contained in the Texas Medicaid Provider Procedures Manual (TMPPM). TMPPM 1.6.3, in particular, requires Texas Medicaid providers to retain records for a minimum of five years for the purpose of facilitating "investigation or study of the appropriateness of the Medicaid claims submitted by the provider."

The proposed amendment is estimated to have no fiscal impact. The costs associated with the panel of physicians are absorbed by the State's recovery audit contractor and not passed on to the State. In addition, since the quantity of reviews conducted by the recovery audit contractor is limited to a finite number, the associated recoveries are not expected to change.

To obtain copies of the proposed amendment, interested parties may contact Beren Dutra, State Plan Specialist, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-201803266
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 30, 2018

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of July, 2018, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Fort Worth	XS Sight Systems Inc.	L06946	Fort Worth	00	07/03/18

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Amarillo	Amarillo College	L06477	Amarillo	04	07/16/18
Austin	Seton Family of Hospitals	L00268	Austin	168	07/16/18
Austin	Austin Radiological Association	L00545	Austin	213	07/03/18
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	157	07/16/18
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's South Austin Medical Center	L03273	Austin	111	07/09/18
Austin	St. David's Healthcare Partnership L.P., L.L.C. dba St. David's South Austin Medical Center	L03273	Austin	112	07/10/18
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's South Austin Medical Center	L03273	Austin	113	07/13/18
Austin	Austin Heart P.L.L.C.	L04623	Austin	94	07/11/18
Austin	ARA St. David's Imaging L.P.	L05862	Austin	88	07/03/18
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	23	07/11/18
Austin	Central Texas Medical Specialists P.L.L.C. dba Austin Cancer Centers	L06618	Austin	17	07/03/18
Conroe	Adnan Afzal M.D., P.A. dba Healing Hearts	L06071	Conroe	14	07/09/18
Corpus Christi	Corpus Christi Heart Clinic P.L.L.C.	L06774	Corpus Christi	01	07/16/18
Dallas	Petnet Solutions Inc.	L05193	Dallas	57	07/05/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	Presbyterian Cancer Center – Dallas L.L.C.	L06056	Dallas	13	07/13/18
Denton	North Texas Cancer Center L.P.	L05945	Denton	14	07/11/18
El Paso	Southwest X-Ray L.P.	L05207	El Paso	21	07/13/18
El Paso	Desert Imaging Services L.P.	L06882	El Paso	02	07/09/18
Harlingen	The University of Texas Rio Grande Valley	L06754	Harlingen	01	07/02/18
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	238	07/05/18
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	128	07/06/18
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	91	07/06/18
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	152	07/06/18
Houston	Harris County Hospital District dba Lyndon Baines Johnson General Hospital	L04412	Houston	49	07/03/18
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L04655	Houston	53	07/05/18
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	133	07/03/18
Houston	Petnet Houston L.L.C.	L05542	Houston	37	07/12/18
Houston	Memorial Hermann Health System dba Memorial Hermann Cypress Hospital	L06832	Houston	09	07/05/18
Houston	Jubilant Draximage Radiopharmacies Inc. dba Triad Isotopes	L06944	Houston	01	07/16/18
Laredo	Laredo Regional Medical Center L.P. dba Doctors Hospital of Laredo	L02192	Laredo	44	07/12/18
Lubbock	Covenant Medical Center	L00483	Lubbock	161	07/16/18
North Richland Hills	Columbia North Hills Hospital Subsidiary L.P. dba Medical City North Hills	L02271	North Richland Hills	83	07/09/18
Odessa	Texas Oncology P.A. dba Txas Oncology	L05140	Odessa	19	07/16/18
Pasadena	Arkema Inc.	L06321	Pasadena	04	07/03/18
Plano	Orano Med L.L.C.	L06781	Plano	10	07/11/18
Port Neches	Huntsman Petrochemical L.L.C.	L06323	Port Neches	04	07/05/18
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	243	07/03/18
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	372	07/11/18
Sugar Land	Best Friends Veterinary Services Inc. dba Sugar Land Veterinary Specialists	L06613	Sugar Land	02	07/11/18
Texarkana	Texarkana PET/CT Imaging Institute L.P.	L05495	Texarkana	17	07/05/18
Throughout TX	Cardinal Health	L02117	Austin	94	07/03/18
Throughout TX	Austin	L05504	Austin	24	07/11/18
Throughout TX	Regional Engineering Inc.	L06471	Austin	08	07/03/18
Throughout TX	Alliance Geotechnical Group Inc.	L05314	Dallas	36	07/02/18
Throughout TX	Varco L.P.	L00287	Houston	151	07/05/18
Throughout TX	Texas Gamma Ray L.L.C. dba TGR Industrial Services	L05561	Houston	117	07/10/18
Throughout TX	C&J Spec Rent Services Inc. dba Casedhole Solutions	L06662	Houston	09	07/11/18
Throughout TX	NDT Pro Services L.L.C.	L06772	Houston	09	07/13/18
Throughout TX	Cardno USA Inc.	L06796	Houston	04	07/12/18
Throughout TX	Haimo America Inc.	L06936	Houston	03	07/03/18
Throughout TX	Allen Butler Construction Inc.	L06788	Lubbock	01	07/10/18
Throughout TX	FTI Industries L.P.	L06714	Mansfield	05	07/13/18
Throughout TX	SQS NDT L.P.	L06896	Odessa	03	07/09/18
Throughout TX	Integrated Testing and Engineering Company of San Antonio L.P.	L05150	San Antonio	20	07/13/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	Temple	L00331	Temple	111	07/10/18
Tyler	Mother Frances Hospital Regional Health Care Center dba Christus Mother Frances Hospital – Tyler	L01670	Tyler	211	07/16/18
Waco	Hillcrest Baptist Medical Center dba Baylor Scott & White Medical Center Hillcrest	L00845	Waco	121	07/12/18
Webster	Clear Lake Regional Medical Center Inc.	L01680	Webster	100	07/16/18

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Corpus Christi	Citgo Refining and Chemicals Company L.P.	L00243	Corpus Christi	56	07/06/18
Throughout TX	Team Industrial Services Inc.	L00087	Alvin	247	07/09/18

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Crockett	Houston County Hospital District dba Houston County Medical Center	L06732	Crockett	04	07/10/18
Fort Worth	Tarrant County Cardiology	L04659	Fort Worth	27	07/03/18

TRD-201803303
Barbara L. Klein
General Counsel
Department of State Health Services

Filed: August 1, 2018

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Licensing Actions for Radioactive Materials

During the first half of June 2018, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
East Odessa	Reach Wireline L.L.C.	L06938	East Odessa	00	06/05/18
Midland	Las Energy Services L.L.C.	L06939	Midland	00	06/07/18
Weatherford	Weatherford Health Services L.L.C. dba Medical City Weatherford	L06937	Weatherford	00	06/01/18

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	156	06/15/18
Austin	Texas Oncology	L06206	Austin	18	06/12/18
Beaumont	Exonmobil Corporation dba Exxonmobil Chemical Co. Beaumont Polyethylene Plant	L02316	Beaumont	50	06/01/18
Cleburne	Johns Manville	L01482	Cleburne	25	06/06/18
Dallas	Petnet Solutions Inc.	L05193	Dallas	56	06/15/18
Dallas	The Heartbeat Clinic	L06204	Dallas	03	06/07/18
Deer Park	Shell Chemical L.P.	L04933	Deer Park	30	06/14/18
Houston	SJ Medical Center L.L.C. dba St. Joseph Medical Center	L02279	Houston	92	06/08/18
Houston	Haimo America Inc.	L06936	Houston	02	06/14/18
Longview	Texas Oncology P.A. dba Longview Cancer Center	L05017	Longview	21	06/01/18
Lubbock	Methodist Childrens Hospital dba Joe Arrington Cancer Center	L06900	Lubbock	02	06/11/18
San Antonio.	BHS Physicians Network Inc. dba Heart & Vascular Institute of Texas	L06750	San Antonio	09	06/08/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Stafford	Aloki Enterprise Inc.	L06257	Stafford	45	06/12/18
Throughout TX	ECS Southwest L.L.P.	L05319	Austin	12	06/01/18
Throughout TX	Weatherford International L.L.C.	L04286	Benbrook	123	06/06/18
Throughout TX	Rone Engineering Services Ltd.	L02356	Dallas	52	06/07/18
Throughout TX	Alliance Geotechnical Group Inc.	L05314	Dallas	35	06/01/18
Throughout TX	Professional Service Industries Inc.	L06169	Harker Heights	06	06/14/18
Throughout TX	Halliburton Energy Services Inc.	L00442	Houston	139	06/05/18
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L01911	Houston	159	06/14/18
Throughout TX	Haimo America Inc.	L06936	Houston	01	06/04/18
Throughout TX	Pecofacet US Inc.	L00330	Mineral Wells	45	06/08/18
Throughout TX	Pro Inspection Inc.	L06666	Odessa	06	06/07/18
Throughout TX	Amtech Building Sciences Inc.	L04486	Richardson	13	06/01/18
Throughout TX	Burge-Martinez Consulting Inc.	L05907	San Antonio	12	06/15/18
Throughout TX	Frost Geosciences Inc.	L06015	San Antonio	06	06/08/18
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	206	06/14/18
Throughout TX	Thermo Process Instruments L.P.	L06804	Sugar Land	07	06/07/18
Throughout TX	Evolution Well Services Operating L.L.C.	L06748	The Woodlands	03	06/08/18
Tomball	Center for Cardiovascular Medicine P.A. dba Lone Star Heart and Vascular Center	L06523	Tomball	03	06/15/18
Tyler	Allens Nutech Inc. dba Nutech Inc.	L04274	Tyler	84	06/15/18
Tyler	Physician Reliance Network Inc. dba Tyler Cancer Center	L04788	Tyler	32	06/01/18
Tyler	Cardiac Imaging Inc.	L06565	Tyler	14	06/08/18
Victoria	Citizens Medical Center	L00283	Victoria	94	06/06/18
Waco	Baylor University	L00343	Waco	43	06/06/18

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Arlington	Columbia Medical Center of Arlington Subsidiary L.P. dba Medical Center of Arlington	L02228	Arlington	85	06/05/18
Borger	Chevron Phillips Chemical Company L.P.	L05181	Borger	28	06/03/18
Brownsville	Heart Institute of Brownsville L.L.P.	L05261	Brownsville	11	06/04/18
Irving	Gregory A. Echt, M.D., P.A. dba Las Colinas Cancer Center	L06078	Irving	16	06/14/18
Midland	Isotech Laboratories Inc.	L04283	Midland	32	06/01/18
Throughout TX	Stearns Conrad and Schmidt Consulting Engineers Inc. dba SCS Engineers	L06209	Houston	04	06/04/18

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Sherman	North Texas Cardiology L.L.P.	L05395	Sherman	17	06/06/18
Throughout TX	Fox NDE L.L.C. dba Eagle NDT	L06411	Abilene	19	06/05/18
Throughout TX	US NDI L.L.C.	L06597	Abilene	06	06/05/18
Weatherford	Weatherford Texas Hospital Company L.L.C. dba Weatherford Regional Medical Center	L02973	Weatherford	35	06/04/18

TRD-201803304
Barbara L. Klein
General Counsel
Department of State Health Services

Filed: August 1, 2018

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Licensing Actions for Radioactive Materials

During the second half of June, 2018, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Dallas	Cardiology Specialists of North Texas P.L.L.C. dba North Texas Heart Center	L06941	Dallas	00	06/19/18
Dallas	Jubilant Draximage Radiopharmacies Inc. dba Triad Isotopes	L06943	Dallas	00	06/21/18
Houston	Global Downhole Tools Inc.	L06942	Houston	00	06/19/18
Houston	Jubilant Draximage Radiopharmacies Inc. dba Triad Isotopes	L06944	Houston	00	06/21/18
McKinney	Texas Oncology P.A. dba Texas Oncology	L06947	McKinney	00	06/29/18
Pittsburg	Pittsburg Hospital L.L.C. dba UT Health East Texas Pittsburg Hospital	L06940	Pittsburg	00	06/19/18
Throughout TX	CMT Associates L.L.C.	L06945	Denton	00	06/29/18

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Alvin	Equistar Chemicals L.P.	L03363	Alvin	30	06/29/18
Austin	Austin Radiological Association	L00545	Austin	212	06/25/18
Austin	Austin Heart P.L.L.C.	L04623	Austin	93	06/28/18
Baytown	Covestro L.L.C.	L01577	Baytown	68	06/21/18
Brownsville	Heart Institute of Brownsville L.L.P.	L05261	Brownsville	12	06/25/18
Brownwood	Brownwood Hospital L.P. dba Brownwood Regional Medical Center	L02322	Brownwood	66	06/22/18
Cedar Park	Cedar Park Health System L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	18	06/22/18
Dallas	Dallas Medical Center L.L.C.	L06584	Dallas	13	06/28/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	216	06/29/18
Deer Park	Shell Oil Company	L04554	Deer Park	41	06/21/18
Deer Park	Shell Chemical L.P.	L04933	Deer Park	31	06/22/18
Desoto	Vishu Lammata M.D., P.A.	L05311	Desoto	15	06/21/18
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	157	06/27/18
Fort Worth	Cook Children's Medical Center	L04518	Fort Worth	34	06/20/18
Fort Worth	Fort Worth Heart P.A.	L05480	Fort Worth	49	06/27/18
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	41	06/25/18
Houston	Methodist Health Centers dba Houston Methodist West Hospital	L06358	Houston	09	06/27/8
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L06439	Houston	13	06/20/18
La Porte	Akzo Nobel Polymer Chemicals L.L.C.	L04372	La Porte	20	06/28/18
La Porte	The Chemours Company F.C., L.L.C.	L06683	La Porte	03	06/21/18
Lubbock	Mohammad Fawwaz Shoukfeh M.D., P.A. dba Texas Cardiac Center	L05276	Lubbock	20	06/15/18
Lubbock	Methodist Children's Hospital dba Joe Arrington Caner Center	L06903	Lubbock	01	06/20/18
Pasadena	Pasadena Refining System Inc.	L01344	Pasadena	36	06/29/18
Plano	Texas Health Presbyterian Hospital Plano	L04467	Plano	76	06/29/18
Queen City	Graphic Packaging International L.L.C.	L06934	Queen City	01	06/19/18
Richardson	Truglo, Inc.	L05519	Richardson	15	06/20/18
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	243	06/22/18
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	371	06/20/18
San Antonio	VHS San Antonio Imaging Partners L.P. dba Baptist M&S Imaging Center	L04506	San Antonio	98	06/21/18
San Antonio	Petnet Solutions Inc.	L05569	San Antonio	34	06/18/18
San Antonio	Nix Hospitals System L.L.C. dba Nix Health Care System	L06512	San Antonio	03	06/27/18
Sugar Land	Methodist Sugar Land Hospital Cancer Center	L06232	Sugar Land	13	06/26/18
Sugar Land	TMH Physician Associates P.L.L.C. dba Methodist Diagnostic Cardiology of Houston	L06527	Sugar Land	05	06/29/18
The Woodlands	St. Luke's Community Health Services dba St. Luke's The Woodlands Hospital	L06370	The Woodlands	10	06/22/18
The Woodlands	Advanced Cardiovascular Care Center	L06654	The Woodlands	02	06/25/18
Throughout TX	Tucker Energy Services Inc.	L06157	Abilene	10	06/29/18
Throughout TX	Desert NDT L.L.C. dba Shawcor	L06462	Abilene	41	06/26/18
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Services	L03398	Amarillo	45	06/29/18
Throughout TX	Phoenix Mechanical Integrity Services L.L.C.	L06787	Angleton	06	06/25/18
Throughout TX	ECS Southwest L.L.P.	L05319	Austin	13	06/21/18
Throughout TX	Pioneer Wireline Services L.L.C.	L06220	Converse	39	06/29/18
Throughout TX	Cardinal Health	L04043	Corpus Christi	54	06/29/18
Throughout TX	Inspection Associates Inc.	L06601	Cypress	11	06/22/18
Throughout TX	Technology Service Professionals Inc.	L06570	Dallas	06	06/21/18
Throughout TX	Wood Environment & Infrastructure Solutions Inc.	L03622	El Paso	36	06/25/18
Throughout TX	Integrated Testing & Engineering Company of DFW Metro Inc. dba Terradyne Inc.	L06525	Euless	05	06/29/18
Throughout TX	National Inspection Services L.L.C.	L05930	Fort Worth	43	06/27/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	QES Wireline L.L.C.	L06620	Fort Worth	18	06/29/18
Throughout TX	Varco L.P.	L00287	Houston	150	06/21/18
Throughout TX	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	175	06/25/18
Throughout TX	Baker Hughes Oilfield Operations L.L.C.	L04452	Houston	57	06/20/18
Throughout TX	Petnet Houston L.L.C.	L05542	Houston	36	06/15/18
Throughout TX	Allied Wireline Services L.L.C.	L06374	Houston	17	06/29/18
Throughout TX	Keane Frac L.P.	L06829	Houston	06	06/20/18
Throughout TX	Prosource Radiography Services L.L.C.	L06905	League City	01	06/21/18
Throughout TX	Pavetex Engineering L.L.C. dba Pavetex	L06407	Lubbock	13	06/18/18
Throughout TX	Enviroklean Product Development Inc.	L06350	Midland	10	06/27/18
Throughout TX	Roke Technologies USA Inc.	L06865	Midland	02	06/26/18
Throughout TX	Arias & Associates Inc. dba Arias Geoprofessionals	L04964	San Antonio	52	06/19/18
Throughout TX	Spectral Oil & Gas Corporation	L06231	Spring	06	06/26/18
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	156	06/27/18
Tyler	East Texas Medical Center	L00977	Tyler	166	06/25/18
Tyler	Mother Frances Hospital Regional Health Care Center dba Christus Mother Frances Hospital – Tyler	L01670	Tyler	210	06/18/18

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Alice	Usman Qureshi M.D., P.A. dba Alice Heart Center	L05366	Alice	06	06/27/18
Bedford	Heart Place P.A.	L05448	Bedford	16	06/20/18
Humble	Cardiovascular Association P.L.L.C.	L05421	Humble	27	06/20/18
Throughout TX	Alliance Engineering Group Inc.	L06147	Taylor	07	06/29/18

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Dallas	North Texas Heart Center P.A.	L04608	Dallas	43	06/20/18
Houston	Oxy USA Inc.	L06889	Houston	02	06/25/18
Orange	Miguel Castellanos M.D., P.A.	L06184	Orange	04	06/22/18
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	34	06/20/18
San Antonio	Adult Cardiovascular Consultants P.A.	L05836	San Antonio	08	06/26/18
Throughout TX	Pegasus Inspection & Testing Inc.	L06673	Corpus Christi	06	06/26/18

TRD-201803305
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: August 1, 2018

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas by HARTFORD INSURANCE COMPANY OF THE SOUTHWEST, a foreign fire and/or casualty company. The home office is in Hartford, Connecticut.

Application to do business in the state of Texas by HARTFORD INSURANCE COMPANY OF ILLINOIS, a foreign fire and/or casualty company. The home office is in Hartford, Connecticut.

Application to do business in the state of Texas by NUTMEG INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Brentwood, Tennessee.

Application to do business in the state of Texas by STATE VOLUNTEER MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Hartford, Connecticut.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the Texas Register publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201803314
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: August 1, 2018

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Notice of Hearing

AMENDMENTS TO TITLE INSURANCE BASIC MANUAL: TITLE INSURANCE AGENTS, DIRECT OPERATIONS, ESCROW OFFICERS, & CONTINUING EDUCATION

DOCKET NO. 2809

The Commissioner of Insurance will have a public hearing to consider staff's recommendation to revise the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas to implement HB 2491, 85th Leg., Reg. Session (2015), and SB 807, 85th Leg., Reg. Session (2015); to streamline and modernize the licensing and continuing education processes; and to reduce the regulatory burden on license holders and title insurance businesses. The hearing will begin at 9:30 a.m., Central time, August 24, 2018, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

The Commissioner has jurisdiction over this hearing under Insurance Code §§2551.003, 2651.0021, 2651.204, 2652.058, 2703.208, 4003.002, and 36.001, and Occupations Code §55.002 and §55.004.

You may submit written comments prior to the public hearing and may also submit written and oral comments and exhibits at the public hearing. Please include the docket number on any comments or exhibits. Submit two copies of any written comments. Send one copy by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to Jamie Walker, Deputy Commissioner, Financial Regulation Division, Mail Code 113-1F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to Jamie.Walker@tdi.texas.gov.

TRD-201803333
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: August 1, 2018

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Texas Department of Licensing and Regulation

Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held July 20, 2018, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 11018) to include the Code Enforcement Officer program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

In 2015, the 84th Texas Legislature enacted Senate Bill 202 which provided for the transfer of thirteen health-related programs from the Department of State Health Services to TDLR. Seven of the thirteen programs transferred to TDLR, effective October 3, 2016, and the remaining six programs transferred November 1, 2017. The Code Enforcement Officer program was transferred in the second phase.

Christylla Miles, Stuart Walker, and Teresa Adrian, members of the Code Enforcement Officer Advisory Committee, were appointed to serve on an enforcement workgroup. Agency staff met with the enforcement workgroup on April 23, 2018, to develop the criminal conviction guidelines for the Code Enforcement Officer program.

The Criminal Conviction Guidelines for the Code Enforcement Officer program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to Code Enforcement Officer Advisory Committee at its meeting on May 10, 2018, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for Code Enforcement Officer program

Crimes involving fraud, deceptive trade/business practices, or abuse of office.

Reasons:

1. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.

2. A person with the predisposition and experience in conduct such as abuse of official capacity as a public servant, official oppression, misuse of official information and the like would have the opportunity to engage in further similar conduct.

3. A person practicing deception towards a property owner having code enforcement work done regarding whether the work is performed properly and in accordance with established industry standards puts residents, property owners, their family, friends, and others at risk.

Crimes involving bribery, forgery, tampering with a governmental record, or perjury.

Reasons:

1. Licensees have the means and the opportunity to practice deceit fraud and misrepresentation related to the need for service.

2. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.

3. A licensee practicing deception or corruption involving property owners, government officials, courts, or members of the public puts residents, property owners, their family, friends, and others at risk.

Crimes involving environmental law violations.

Reasons:

1. A person having the predisposition and experience in committing environmental law violations would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Code enforcement officers have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

3. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct and public indecency.

Reasons:

1. Code enforcement officers have direct access to private residences and deal directly with the general public, often in private settings.

2. Code enforcement officers have direct access to business facilities and deal directly with the owners of the businesses and business personnel, often in private settings.

3. Code enforcement officers with the predisposition and experience in committing crimes of this nature would put the public at risk.

4. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children, the elderly or the disabled as victims.

Reasons:

1. Code enforcement officers interact with residents, property owners, family, friends, and others, in a position of trust and authority. Persons who have a history of committing such crimes could exploit this position and would pose a danger to the residents, property owners, or others.

2. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as arson, theft, or burglary.

Reasons:

1. Code enforcement officers have access to private residences and businesses and would have access to unsecured personal property belonging to others.

2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes involving the delivery, possession, manufacturing, or use of controlled substances or dangerous drugs.

Reasons:

1. Due to the safety concerns pertaining to the performance of code enforcement work, a person with convictions involving illegal use of controlled substances or dangerous drugs has not demonstrated fitness for the duties performed by a code enforcement officer.

Crimes involving being intoxicated by use of alcohol, drugs, or dangerous substances.

Reasons:

1. A person who may be impaired or intoxicated would pose a risk to the public.

2. Due to the safety concerns pertaining to the performance of code enforcement work, a person with convictions involving intoxication by use of alcohol, drugs, or dangerous substances has not demonstrated fitness for the duties performed by a code enforcement officer.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the complete guidelines.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-201803206
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: July 26, 2018

Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held July 20, 2018, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 11018) to include the Registered Sanitarians program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

In 2015, the 84th Texas Legislature enacted Senate Bill 202 which provided for the transfer of thirteen health-related programs from the Department of State Health Services to TDLR. Seven of the thirteen programs transferred to TDLR, effective October 3, 2016, and the remaining six programs transferred November 1, 2017. The Registered Sanitarians program was transferred in the second phase.

Jim Dingman, Lisa Pomroy, Shaun May, and Ray Knight, members of the Registered Sanitarian Advisory Committee, were appointed to serve on an enforcement workgroup. Agency staff met with the enforcement workgroup on April 24, 2018, to develop the criminal conviction guidelines for the Registered Sanitarians program.

The Criminal Conviction Guidelines for the Registered Sanitarians program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to Registered Sanitarians Advisory Committee at its meeting on May 8, 2018, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for Registered Sanitarians program

Crimes involving fraud, deceptive trade/business practices, or abuse of office.

Reasons:

1. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.

2. A person with the predisposition and experience in conduct such as abuse of official capacity as a public servant, official oppression, misuse of official information and the like would have the opportunity to engage in further similar conduct.

3. A person practicing deception towards a property owner having environmental health work done regarding whether the work is performed properly and in accordance with established industry standards puts residents, property owners, their family, friends, and others at risk.

Crimes involving bribery, forgery, tampering with a governmental record, or perjury.

Reasons:

1. Registered sanitarians have the means and the opportunity to practice deceit fraud and misrepresentation related to the need for service.

2. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.

3. A registered sanitarian practicing deception or corruption involving property owners, government officials, courts, or members of the public puts residents, property owners, their family, friends, and others at risk.

Crimes involving environmental law violations or affecting public health.

Reasons:

1. A person having the predisposition and experience in committing environmental law violations or offenses that affect public health would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping, assault or crimes involving negligent or reckless use of a motor vehicle.

Reasons:

1. Registered sanitarians have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

3. Registered sanitarians regularly travel by motor vehicle to perform their work and would have many opportunities to perform work duties or to use electronic communication devices while driving or to drive while excessively fatigued. A person driving in a distracted or unsafe manner would pose a risk to the public.

4. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving animal cruelty or neglect.

Reasons:

1. Registered sanitarians may have direct contact with or responsibility for the health and wellbeing of domestic animals at residences and businesses in the performance of their duties.

2. A person who has committed crimes involving cruel or neglectful conduct towards animals or that otherwise placed animals at risk for harm would have the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct and public indecency.

Reasons:

1. Registered sanitarians have direct access to private residences and deal directly with the general public, often in private settings.

2. Registered sanitarians have direct access to business facilities and deal directly with the owners of the businesses and business personnel, often in private settings.

3. Registered sanitarians with the predisposition and experience in committing crimes of this nature would put the public at risk.

4. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children, the elderly or the disabled as victims.

Reasons:

1. Registered sanitarians interact with residents, property owners, family, friends, and others, in a position of trust and authority. Persons who have a history of committing such crimes could exploit this position and would pose a danger to the residents, property owners, or others.

2. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as arson, theft, or burglary.

Reasons:

1. Registered sanitarians have access to private residences and businesses and would have access to unsecured personal property belonging to others.

2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes involving the delivery, possession, manufacturing, or use of controlled substances or dangerous drugs.

Reasons:

1. Due to the safety concerns pertaining to the performance of environmental health work, a person with convictions involving illegal use of controlled substances or dangerous drugs has not demonstrated fitness for the duties performed by a registered sanitarian.

2. Registered sanitarians' mobility allows them the opportunity to receive, sell or otherwise distribute illegal goods or substances.

3. A person with a predisposition and experience in committing such crimes would have the opportunity to engage in further similar conduct.

Crimes involving being impaired or intoxicated by use of alcohol, drugs, or dangerous substances.

Reasons:

1. A person who may be impaired or intoxicated would pose a risk to the public.

2. Due to the safety concerns pertaining to the performance of environmental health work, a person with convictions involving intoxication by use of alcohol, drugs, or dangerous substances has not demonstrated fitness for the duties performed by a registered sanitarian.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the complete guidelines.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-201803207
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: July 26, 2018

♦ ♦ ♦

Public Notice - Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held July 20, 2018, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Driver Training and Traffic Safety program.

In 2015, the 84th Texas Legislature enacted House Bill 1786 which provided for the transfer of Driver Education Schools, Driving Safety Course Providers, Driving Safety Schools and Instructors under Chapter 1001, Texas Education Code, from TEA/ESC Region 13 to TDLR. Additionally, the bill transferred the Parent Taught Driver Education program from the Texas Department of Public Safety (DPS) to TDLR.

Ricardo Benavides, Frances Gomez, Carlos Reyna, and Nina Jo Saint, members of the Driver Training and Traffic Safety Advisory Committee, were appointed to serve on an enforcement workgroup. Agency staff met with the enforcement workgroup on February 12, March 7, and April 13, 2018, to develop a penalty matrix for the Driver Training and Traffic Safety program. To address the unique business functions within the Driver Training and Traffic Safety program, four separate penalty matrices were created: Driver Education Schools and Instructors, Driving Safety Schools and Instructors, Course Providers, and Drug and Alcohol Driving Awareness Programs. The full Driver Training and Traffic Safety Advisory Committee reviewed the matrix on May 9, 2018, and recommended its approval by the Commission.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

DRIVER EDUCATION SCHOOLS AND INSTRUCTORS
(DES)

Class A

Penalty Range:
$100 to $250

Administrative Violations

• Failed to require a student to complete 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night as required	1001.101(b)(3)
• Failed to carry instructor's license at all times	1001.356
• Failed to maintain a current mailing address, telephone and e-mail address with the department	84.41(a)(1)
• Failed to ensure that no instructor provides more than 10 hours of behind-the-wheel instruction per day	84.41(a)(6)
• Failed to maintain a record reconciling all DE-964s and ADE-1317s	84.43(a)
• Failed to maintain a record reconciling all certificate numbers	84.43(d)(1)
• Failed to notify the department of a change of address in writing within 30 days	84.44(g)
• Failed to provide a statement stating the conditions for dismissal	84.47(1)
• Failed to provide a statement stating the conditions for reentry of students	84.47(2)
• Failed to properly display a copy of the establishment's most recent inspection report	84.100(e)

Posting and Public Information-Related Violations

• Failed to notify consumers and service recipients of the department's complaint information	84.41(c)(4); 84.83(c); 84.84

Operations-Related Violations

• Failed to make every effort to resolve disputes between students and the school	84.83(b)

Class B

Penalty Range:
$150 to $500 and/or up to 1-year full suspension

Administrative Violations

• Failed to apply for a new driver training school license at least 30 days before the date of a change of ownership	1001.213(b)
• Failed to notify the department in writing of any change of address at least 15 days before the move of a driver education school	84.40(e)(1)
• Failed to submit change of address fee prior to actual move	84.40(e)(2)
• Failed to report all unaccounted DE-964s and ADE-1317s to the department within 15 working days	84.43(b)(3)
• Failed to submit findings of the investigation of unaccounted DE-964 and ADE-1317s to the department within 30 days	84.43(b)(3)
• Failed to issue a duplicate DE-964 or ADE-1317 which indicates the control number of the original certificate	84.43(c)
• Failed to make available to the department upon request an ascending numerical accounting record of certificates issued	84.43(d)(3)
• Failed to report all unaccounted numbers or certificates to the department within 5 working days	84.43(d)(6)
• Failed to submit findings of the investigation of unaccounted numbers or certificates to the department within 30 days	84.43(d)(6)
• Failed to sequentially number original driver education certificates from the block of numbers purchased from the department	84.43(d)(9)
• Failed to ensure the duplicate driver education certificate bears a serial number from the block of numbers purchased from the department by the school	84.43(d)(10)
• Failed to ensure the duplicate driver education certificate contains the number of both the duplicate and the original serial number of the certificate being replaced	84.43(d)(10)
• Failed to provide a cancellation and refund policy in accordance with Code and chapter	84.200(a)

Advertising Violations

• Used advertising that was false, misleading, or deceptive	1001.451(1); 84.80(d)
• Failed to use the same name at branch school as the primary school	84.40(i); 84.80(c)

• Advertised or otherwise stated or implied that a driver's license, permit or DE-964 is guaranteed or assured to any student or individual who will take or complete a course	84.40(j)
• Failed to include the school name or number exactly as it appears on the driver education school license	84.40(k)
• Conducted business or advertised under a name that is deceptively similar to another without approval	84.80(a)
• Used names other than the approved school name	84.80(b)

Instructor Violations

• Failed to abide by the Program of Organized Instruction	84.44(b)(1)(B); 84.44(b)(2)(B)
• Performed other than in-car instruction as a teaching assistant	84.44(b)(3)(C)
• Failed to provide evidence of completing an approved continuing education course	84.44(d)(1)

Curriculum-Related Violations

• Provided courses not on the school's list of approved courses	84.41(a)(3)

Operations-Related Violations

• Failed to request an initial inspection from the department	84.101(b)
• Conducted a class at a contract site without prior approval	84.40(l)
• Failed to ensure that all instructors are currently licensed by the department	84.41(a)(2)
• Failed to implement appropriate standards to ascertain the progress of students	84.45; 84.45(1); 84.45(2); 84.45(3)
• Failed to limit driver education training to 5 hours per day	84.46(c)
• Failed to limit classroom instruction to 2 hours per day	84.46(c)
• Failed to limit in-car instruction to 3 hours per day	84.46(c)
• Failed to limit behind-the-wheel instruction to 1 hour per day, except as otherwise provided	84.46(c)(1)
• Failed to include 10-minute break when giving a 2-hour behind-the-wheel instruction	84.46(d)
• Failed to complete a student's hours of instruction within the timeline specified in the original student enrollment contract	84.46(e)
• Initiated or encouraged student absences	84.46(f)
• Failed to obtain parent or guardian agreement for any variance to the timeline in the original enrollment contract	84.46(i)
• Failed to have a written grievance procedure that is disclosed to all students	84.83(a)
• Failed to comply with all state and local ordinances governing housing and safety	84.90(d)

• Failed to retain proof of completion of the refund on file within 75 days of the effective date of termination	84.200(d)
• Failed to identify on refund check student to whom the refund is assigned	84.200(d)

Record-Related Violations

• Failed to make available accurate records as required	1001.451(2); 84.40(h)(1); 84.81(a)(1)
• Failed to make available records and all unissued or unnumbered certificates readily available to the department for review	84.43(d)(2)
• Failed to document and maintain student attendance records daily	84.46(a); 84.81(a)(3)
• Failed to ensure electronic signatures comply with Tex. Bus. and Comm. Code, Ch. 322	84.46(a); 84.82(a)(1)
• Failed to accurately complete all school records and applications	84.81(a)(1)
• Failed to include in the records accurate timecards and schedules for instructors	84.81(a)(1)
• Failed to retain student records for at least 3 years	84.81(a)(2)
• Failed to maintain student completion records at the site of instruction for 12 months	84.81(a)(2)
• Failed to include required information in the attendance records	84.81(a)(3)(A); 84.81(a)(3)(B); 84.81(a)(3)(C); 84.81(a)(3)(D)
• Failed to furnish each student a duplicate of his or her completed instruction record	84.81(a)(3)(E)
• Released prohibited student identifying information	84.81(a)(3)(F)
• Failed to include required information in all driver education student enrollment contracts	84.82(a)(2); 84.82(a)(3)
• Failed to include a copy of each contract in the student file	84.82(a)(5)
• Failed to maintain refund documents for 75 days from the date of termination	84.200(d)

Vehicle-Related Violations

• Conduct in-car instruction in a vehicle not owned or leased by the driver education school	84.42
• Failed to ensure all vehicles used by the school were properly registered and inspected by the Texas Department of Motor Vehicles	84.42(1)
• Failed to ensure all vehicles used by the school are equipped with a dual control brake pedal	84.42(2)

• Failed to ensure all vehicles used by the school are equipped with an extra inside rearview mirror on the instructor's side and an outside rearview mirror on both sides.	84.42(3)
• Failed to ensure all vehicles used by the school are properly insured	84.42(4)

Class C

Penalty Range:
$250 to $750 and/or up to revocation

Administrative Violations

• Failed to notify the department within 15 working days of a driver training school closing and the last day of classes	1001.451(2); 84.40(h)(1)
• Failed to provide written notice to the department of the last day of classes	84.40(h)(1)

Certificate-Related Violations

• Issued, sold, traded or transferred a certificate to a person or driver training school not authorized to possess the certificate	1001.451(3)(A)
• Issued, sold, traded or transferred a certificate to a person who has not successfully completed a department-approved course	1001.451(3)(C); 84.41(a)(4); 84.43(d)(5); 84.45(4)
• Failed to develop and maintain a department-approved method for printing and issuing original and duplicate driver education certificates that prevents the unauthorized production or misuse	84.41(c)(3)
• Transferred unassigned DE-964s and ADE-1317s to another school without department approval	84.43(b)(2)
• Failed to maintain effective protective measures to ensure that unissued DE-964s and ADE-1317s are secure	84.43(b)(3)
• Failed to conduct an investigation to determine the circumstances surrounding the unaccounted DE-964s and ADE-1317s	84.43(b)(3)
• Failed to return unissued DE-964 and ADE-1317 certificates to the department within 30 days from the date the school closed	84.43(b)(4)
• Failed to implement and maintain a policy which effectively ensures protective measures for securing certificates numbers	84.43(d)(2)
• Failed to maintain electronic files with data pertaining to all driver education certificate numbers purchased from the department	84.43(d)(3); 84.43(d)(4)
• Failed to ensure security of electronic files and data	84.43(d)(3); 84.43(d)(4)

• Failed to report all unaccounted driver education numbers to the department within 5 working days of the discovery	84.43(d)(6)
• Failed to submit a report of the findings of the investigation of unaccounted driver education numbers to the department within 30 days of the discovery	84.43(d)(6)
• Transferred driver education certificate numbers to another school without department approval	84.43(d)(8)
• Failed to return unissued DE-964 and ADE-1317 certificate numbers to the department within 30 days from school closure	84.43(d)(11)

Curriculum-Related Violations

• Failed to require minimum 32-hours of classroom instruction	1001.101(a); 84.500(b)(1)(A)(i)
• Failed to require a student to complete 7 hours of behind-the-wheel instruction as required	1001.101(b)(1)
• Failed to require a student to complete 7 hours of observation instruction as required	1001.101(b)(2)
• Offered an adult driver education course that was not 6 hours	1001.1015(b)(1)
• Offered an adult driver education course that did not include instruction in required content	1001.1015(b)(2)

Facility-Related Violations

• Conducted a course in a facility not approved by the department	84.90(a)
• Conducted a course in a private residence	84.90(b)
• Failed to meet the use requirements of the maximum number of current students	84.90(c)
• Failed to ensure classroom facilities, when used for instruction, met all requirements	84.90(e)
• Failed to provide designated instructional areas that ensure students are able to see and hear the instructor and audiovisual aids	84.90(f)

License or Inspection-Related Violations

• Operated a school that provides a driver education course without a driver education school license	1001.201(1)
• Taught a driver education course at a branch location of a driver education school without a separate driver education school license for its main business location and each branch location	1001.202(a)
• Taught or provided driver education without a driver education instructor license	1001.251(a)
• Conducted a course of instruction before the date the driver training school receives a driver training school license	1001.452

• Failed to obtain original license or branch school upon purchasing a licensed driver education school	84.40(d)(1)
• Operated a driver education school which has changed ownership without an inspection and approval by the department	84.101(a)

Operations-Related Violations

• Conducted any part of a driver education course without having an instructor physically present	1001.451(5)
• Failed to ensure all instructors are properly licensed with the correct endorsement	84.41(a)(2)
• Authorized, approved, or conducted instruction in a motor vehicle that failed to meet all requirements	84.41(a)(5)
• Failed to develop and maintain a means to ensure the security and integrity of student information	84.41(c)(1); 84.41(c)(2)
• Refused to cooperate with an inspector in the performance of the inspection	84.100(d); 60.23(a)(3)

Tuition and Refund-Related Violations

• Failed to refund all tuition and fees paid on the discontinuation of a course	1001.403
• Negotiated a promissory instrument received as payment of tuition or another charge before the student completes 75 percent of the course, except as permitted	1001.451(4)
• Failed to assume all refund liabilities incurred by the seller or any former owner	84.40(d)(2)
• Failed to provide a pro-rata refund (without deducting administrative expense) to a student who is not willing to change location	84.40(e)(3)
• Failed to provide a pro-rata refund (without deducting administrative expense) to a student of a branch school that closes	84.40(h)(3)
• Failed to execute a student contract prior to receiving any money	84.82(a)(1)
• Failed to issue refund that corresponds to the actual instructional hours not provided	84.200(c)
• Failed to complete refund within 30 days after the effective date of termination except as allowed under §84.46	84.200(d)

Class D

Penalty Range:
$1,000 and/or revocation

Compliance, Fraud or Unethical Conduct-Related Violations

• Failed to comply with an order of the executive director or commission	51.353(a)
• Instructor failed to meet a requirement for issuance of or holding a license	1001.455(a)(1)
• Instructor permitted or engaged in misrepresentation, fraud or deceit in applying for obtaining a certificate, license or permit	1001.455(a)(2)
• Instructor induced fraud or fraudulent practices in an action between the application for a driver's license or permit	1001.455(a)(3)
• Instructor permitted or engaged in any other fraudulent practice in an action between the applicant or license holder and the public	1001.455(a)(4)

DRIVING SAFETY SCHOOLS AND INSTRUCTORS
(DES)

Class A

Penalty Range:
$100 to $250

Administrative Violations

• Failed to carry instructor's license at all times	1001.356
• Failed to include required statements in any contract or instrument transferring the ownership of a driving safety school	84.60(c)(2)

Posting and Public Information-Related Violations

• Failed to notify consumers and service recipients of the department's complaint information	84.83(c); 84.84

Operations-Related Violations

• Failed to require a written commitment from student to family and friends that the students will not engage in dangerous driving habits	1001.111(b)(3)
• Failed to ensure that the court information is obtained from each student taking the driving safety	84.63(c)(4)

Class B

Penalty Range:
$150 to $500 and/or up to 1-year full suspension

Administrative Violations

• Failed to apply for a new driver training school license at least 30 days before the date of a change of ownership	1001.213(b)
• Failed to notify the department in writing of any change of address at least 15 days before the move of a driver safety school	84.60(d)(1)
• Failed to submit appropriate fee and all documents for a new location	84.60(d)(2)

• Failed to forward all records to the course provider responsible for the records within 15 days of closure	84.60(g)(1)
• Failed to execute a written legal contract prior to instruction or receipt of money	84.82(b)(1)

Advertising Violations

• Used advertising that was false, misleading, or deceptive	1001.451(1); 84.80(d)
• Conducted business or advertised under a name that is deceptively similar to another without approval	84.80(a)
• Used names other than the approved school name	84.80(b)

Operations-Related Violations

• Failed to perform all instruction in a location approved by the department	84.61(a)
• Failed to ensure that all instructors are currently licensed by the department	84.61(c)(1)
• Provide instruction in courses not on the school's list of approved courses	84.61(c)(3)
• Failed to evaluate instructor performance in accordance with the course provider plan	84.61(c)(4)
• Failed to develop and maintain a means to ensure the security and integrity of student information	84.61(c)(5)
• Failed to disclose a written grievance procedure to all students	84.83(a)
• Failed to meet any state and local ordinances governing housing and safety for the use designated	84.90(d)
• Failed to provide a cancellation and refund policy in accordance with Code and chapter	84.200(a)
• Failed to use the cancellation policy approved for the course provider	84.200(b)
• Failed to retain proof of completion of the refund on file within 75 days of the effective date of termination	84.200(d)
• Failed to identify on refund check student to whom the refund is assigned	84.200(d)

Record-Related Violations

• Failed to make available accurate records as required	1001.451(2)
• Failed to furnish upon request any data pertaining to student enrollments and attendance	84.81(b)(1)
• Failed to include required information in all driving safety and specialized driving safety contracts	84.82(b)(2)

• Failed to include required statements in all driving safety school contracts	84.82(b)(3)
• Failed to ensure a copy of each contract is a part of the student files maintained by the driving safety school	84.82(b)(5)
• Failed to ensure contracts for group instruction to meet all legal requirements	84.82(b)(7)

Class C

Penalty Range:
$250 to $750 and/or up to revocation

Administrative Violations

• Failed to notify the department within 15 working days of a driver training school closing	1001.451(2)

Certificate-Related Violations

• Issued, sold, traded or transferred a certificate to a person not authorized to possess the certificate	1001.451(3)(A)
• Issued, sold, traded or transferred a certificate to a person who has not completed an approved driving safety course	1001.451(3)(B)
• Failed to pay a fee to the course provider as required for certificate numbers provided for the students within 7 days of course completion	84.61(c)(6)
• Fail to maintain the verification of course completion document for no less than 3 years	84.63(a)(1)
• Failed to ensure that the course provider policies are followed and communicated	84.63(b)(1)
• Failed to ensure that all records are returned to the course provider in a timely manner as set forth by the course provider	84.63(b)(2)

Curriculum-Related Violations for Drivers Younger than 25 Years of Age

• Failed to conduct a course in the required format	1001.111(b)(1)
• Failed to include required instruction	1001.111(b)(2)

Facility-Related Violations

• Failed to conduct a department approved course in a facility or facilities approved by the department	84.90(a)
• Failed to meet the use requirements of the maximum number of current students in a class	84.90(c)
• Failed to ensure classroom facilities, when used for instruction, met all requirements	84.90(e)
• Failed to provide designated instructional areas that promote learning by ensuring that students are able to see and hear the instructor and audiovisual aids	84.90(f)

Instructor-Related Violations

• Failed to ensure all records are returned to the driving safety school to be forwarded to the course provider	84.63(c)(1)
• Failed to ensure that the verification of course completion document is signed by the instructor who conducted the class	84.63(c)(2)
• Failed to ensure that the entire course is completed prior to signing the verification of course completion document	84.63(c)(3)
• Failed to ensure that the instructor adheres to the school and course provider policies	84.63(c)(5)

Operations-Related Violations

• Operated a school that provides driving safety courses without a driving safety school license	1001.201(2)
• Driving safety school used multiple classroom locations to teach a driving safety course without approval of the department	1001.202(b); 84.60(a)(1)
• Taught or provided driving safety training without a driving safety instructor license, except when applicable	1001.251(b)
• Refused to cooperate with an investigation by an authorized representative of the department	60.23(a)(3)
• Failed to obtain an original license upon purchasing a licensed driving safety school	84.60(c)(1)
• Failed to perform all instruction by licensed instructors	84.61(a)
• Failed to ensure a student instructor trainee was teaching under required supervision	84.61(a)
• Failed to ensure that all instructors are properly licensed with the proper endorsement	84.61(c)(1)
• Failed to prohibit an instructor from giving instruction while intoxicated or otherwise impaired	84.61(c)(2)
• Failed to prohibit a student from receiving instruction while the student exhibits any effects of being intoxicated or otherwise impaired	84.61(c)(2)

Tuition and Refund-Related Violations

• Negotiated a promissory instrument received as payment of tuition or another charge before the student completes 75 percent of the course, except as permitted	1001.451(4)
• Failed to issue refund that corresponds to the actual instructional hours not provided	84.200(c)
• Failed to complete refund within 30 days after the effective date of termination except as allowed under §84.46	84.200(d)

Class D

Penalty Range:
$1,000 and/or revocation

Compliance, Fraud or Unethical Conduct-Related Violations

• Failed to comply with an order of the executive director or commission	51.353(a)
• Instructor failed to meet a requirement for issuance of or holding a license	1001.455(a)(1)
• Instructor permitted or engaged in misrepresentation, fraud or deceit in applying for obtaining a certificate, license or permit	1001.455(a)(2)
• Instructor induced fraud or fraudulent practices in an action between the application for a driver's license or permit	1001.455(a)(3)
• Instructor permitted or engaged in any other fraudulent practice in an action between the applicant or license holder and the public	1001.455(a)(4)

COURSE PROVIDERS
(DES)

Class A

Penalty Range:
$100 to $250

Administrative Violations

• Failed to provide the department written notice of a driver safety school closure within 5 days of being notified	84.60(g)(2)
• Failed to maintain a current mailing address with the department	84.61(b)(2)
• Failed to ensure that applications for licenses or approvals are forwarded to the department within 10 days of receipt at the course provider facilities	84.61(b)(5)
• Failed to ensure that instructor performance is monitored and documented as required	84.61(b)(6)
• Failed to keep instructor evaluation forms on file either at the course provider or school location for a period of 1 year	84.61(b)(6)
• Failed to notify the department of the closure date of the course provider at least 15 business days before the closure	84.62(j)
• Failed to include information regarding duplicate certificate in the student enrollment contract	84.63(a)(16)
• Failed to implement and maintain methods for efficiently issuing and mailing original uniform certificates	84.63(a)(17)
• Failed to include required statement in any contract or instrument transferring the ownership of a course provider	84.62(g)(2)
• Failed to ensure a copy of each contract is a part of the student files maintained by the course provider	84.82(b)(5)
• Failure of a course provider to submit proposed or amended contracts to the division for approval prior to use by schools	84.82(b)(6)

Posting and Public Information-Related Violations

• Failed to have a written grievance procedure that is disclosed to all students	84.83(a)
• Failed to notify consumers and service recipients of the department's complaint information as required	84.83(c); 84.84; 84.61(b)(11)

Class B

Penalty Range:
$150 to $500 and/or up to 1-year full suspension

Administrative and Records Violations

• Fail to make available accurate records as required	1001.451(2)
• Failed to ensure the issue date indicated on the certificate is the date the course provider mailed the certificate to the student	84.61(b)(10)
• Failed to notify the department in writing of any change of address at least 15 working days before the move	84.62(h)
• Fail to submit appropriate fee and all documents	84.62(h)
• Failed to make all records available for review by the department within 30 days of the date the course provider closed	84.62(j)
• Failed to ensure course provider or course provider facilities are located within the United States	84.62(k)
• Fail to report the findings of the investigation, including preventative measures for recurrence, to the department within 30 days of the discovery.	84.63(a)(7)
• Failed to sequentially number original uniform certificates of course completion from the block of numbers purchased from the department	84.63(a)(13)
• Failed to ensure that a duplicate uniform certificate of course completion issued by the course provider bears a serial number from the block of numbers purchased from the department by the course provider	84.63(a)(14)
• Failed to clearly indicate the number of both the duplicate and the original serial number of the certificate being replaced on a duplicate certificate of course completion	84.63(a)(14)
• Failed to clearly indicate both the original data and the replacement data on any item on a duplicate uniform certificate of course completion that has different data than that shown on the original certificate	84.63(a)(15)
• Failed to issue a duplicate uniform certificate of course completion at no cost to the student when required	84.63(a)(16)
• Failed to ensure that schools endorsed to offer the approved course are aware of the requirement to issue a duplicate uniform certificate of course completion at no cost to the student when required	84.63(a)(16)
• Failed to provide evidence to the department of an instructor's completion of continuing education	84.64(e)(1)
• Failed to locate the course provider at the physical address stated on the course provider license	84.90(i)

Advertising Violations

• Used advertising that was false, misleading, or deceptive	1001.451(1); 84.80(d)
• Conducted business or advertised under a name that is deceptively similar to another without approval	84.80(a)
• Used names other the approved course provider name	84.80(b)

Operations-Related Violations by a Course Provider

• Operated as a course provider without a current course provider license	1001.201(3)
• Failed to issue and deliver within 15 working days a uniform certificate of course completion to a person who successfully completes an approved driving safety course	1001.351(a)
• Failed to electronically submit to the department data relating to uniform certificates of course completion issued by the course provider	1001.351(b)
• Failed to conduct driving safety instructor development courses as required	1001.351(c)
• Refused to cooperate with an investigation by an authorized representative of the department	60.23(a)(3)
• Failed to be located or maintain a registered agent in the State of Texas	84.61(a); 84.71(b)
• Failed to ensure that instruction of the course is provided in a school currently approved to offer the course	84.61(b)(1)
• Failed to ensure that instruction of the course is provided in the manner in which the course was approved	84.61(b)(1)
• Failed to ensure that the course is provided by persons who have a valid current instructor license with the proper endorsement, except otherwise provided	84.61(b)(3)
• Failed to ensure that schools and instructors are provided with the most recent approved course materials, data and information within 60 days of approval	84.61(b)(4)
• Failed make the corporate privacy policy available to all course students	84.61(b)(8)
• Failed to submit a complete application for the renewal of a license for a course provider before the expiration of the license	84.62(i)
• Failed to ensure that adequate training is provided regarding course provider policies and updates on course provider policies to all driving safety schools and instructors	84.63(a)(6)
• Failed to retain proof of completion of the refund on file within 75 days of the effective date of termination	84.200(d)
• Failed to identify on refund check student to whom the refund is assigned	84.200(d)

Record-Related Violations

• Failed to furnish upon request any data pertaining to student enrollments and attendance to show compliance with the legal requirements for inspection	84.81(b)(1)
• Failed to retain all student records for at least 3 years	84.81(b)(2); 84.63(a)(2)
• Failed to maintain the records of the students who completed driving safety or specialized driving safety classes for the most current 12 months at the course provider location	84.81(b)(2)
• Failed to retain the actual test of each student for a designated period of time if required	84.81(b)(2)
• Failed maintain a permanent record of instruction given to each student who received instruction to include students who withdrew or were terminated	84.81(b)(3)
• Failed to restrict release of student records that identify the student by name or address, except as permitted	84.81(b)(4)

Class C

Penalty Range:
$250 to $750 and/or up to revocation

Certificate-Related Violations by a Course Provider

• Failed to provide for the printing and issuance of original and duplicate certificates in a manner that prevents the unauthorized production or the misuse of the certificates	1001.056(c-1); 84.63(a)(5)
• Failed to issue all original and duplicate certificates as required	1001.056(g); 84.63(a)(9)
• Issued, sold, traded or transferred a uniform certificate of course completion to a person who has not successfully completed an approved, 6-hour driving safety course	1001.451(3)(B); 84.63(a)(11)
• Failed to ensure the security of the data	84.61(b)(7); 84.61(b)(8); 84.63(a)(3)
• Failed to develop and maintain a department-approved method for printing and issuing original and duplicate uniform certificates of course completion that prevents the unauthorized production or misuse of the certificates	84.61(b)(9)
• Failed to report original and duplicate certificate data, by secure electronic transmission, to the department within 30 days of issue using guidelines established and provided by the department	84.61(b)(10)

• Failed to be responsible for original and duplicate uniform certificates of course completion as required	84.63(a)
• Failed to ensure that each instructor completes the verification of course completion document approved by the department	84.63(a)(1)
• Failed to ensure the verification of course completion document is signed by the instructor and contains the required statement	84.63(a)(1)
• Failed to implement and maintain a policy which effectively ensures protective measures are in use at all times for securing original and duplicate uniform certificates of course completion and course completion certificate numbers	84.63(a)(2)
• Failed to ensure the records and unissued or unnumbered original and duplicate uniform certificates of course completion are readily available for review by representatives of the department	84.63(a)(2)
• Failed to maintain electronic files with data pertaining to all course completion certificate numbers purchased from the department	84.63(a)(3)
• Failed to make available to the department upon request an ascending numerical accounting record of the numbered uniform certificates of completion issued	84.63(a)(3)
• Failed to ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all certificate numbers and all certificates that have been issued	84.63(a)(4)
• Fail to report all unaccounted original and duplicate course completion certificate numbers or unissued certificates or duplicates to the department within 5 business days of the discovery of the incident	84.63(a)(7)
• Failed to be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted items	84.63(a)(7)
• Transferred course completion certificate numbers to a course other than the course for which the certificates were ordered from the department	84.63(a)(10)
• Issued, mailed, transferred or transmitted an original or duplicate uniform certificate of course completion bearing the serial number of a certificate or duplicate previously issued	84.63(a)(12)

Advertising Violations

• Distributed within 500 feet of a court written information that advertises a course provider	1001.453(a); 1001.453(b)

License-Related Violations

• Operated as a course provider without a course provider license	1001.201(3)
• Fail to apply for a new course provider license at least 30 days before the date of the change of ownership	1001.213(b)

• Failed to obtain an original license upon purchasing a licensed course provider	84.62(g)(1)

Tuition and Refund-Related Violations

• Fail to refund all tuition and fees paid on the discontinuation of a course by a course provider	1001.403
• Negotiated a promissory instrument received as payment of tuition or another charge before the student completes 75 percent of the course, except as permitted	1001.451(4)
• Fail to provide a cancellation and refund policy in accordance with Code and chapter	84.200(a)
• Failed to issue refund that corresponds to the actual instructional hours not provided	84.200(c)
• Failed to complete refund within 30 days after the effective date of termination except as allowed under §84.46	84.200(d)

Class D

Penalty Range:
$1,000 and/or revocation

• Failed to comply with an order of the executive director or commission	51.353(a)

DRUG AND ALCOHOL DRIVING AWARENESS PROGRAMS
(DES)

Class A

Penalty Range:
$100 to $250

Administrative Violations

• Failed to ensure a contract transferring the ownership of the school includes the required information	84.70(e)(2)
• Failed to submit appropriate fee and all documents to the department	84.70(f)(2)
• Failed to notify the department of an instructor's change of address in writing	84.72(i)

Posting and Public Information-Related Violations

• Failed to notify consumers and service recipients of the department's complaint information	84.71(c)(5); 84.83(c); 84.84
• Failed to have a written grievance procedure that is disclosed to all students	84.83(a)

Class B

Penalty Range:
$150 to $500 and/or up to 1-year full suspension

Administrative Violations

• Failed to notify the department in writing of any change of address at least 3 working days before the move	84.70(f)(1)
• Failed to provide written notice to the department and the course provider within 5 working days of closure	84.70(i)(1)
• Failed to forward all records to the course provider responsible for the records within 5 days	84.70(i)(1)
• Failed to enroll a person who is being instructed in the program	84.82(c)(1)

Advertising Violations

• Used advertising that was false, misleading, or deceptive	1001.451(1); 84.80(d)

- Included more than one school name on school license 84.70(d)
- Conducted business or advertised under a name that is deceptively similar to another without approval 84.80(a)
- Used names than other the approved school name 84.80(b)

Operations-Related Violations by a Drug and Alcohol Awareness Program

- Failed to ensure instruction was provided by currently licensed instructors 84.71(b)
- Failed to evaluate instructor performance in accordance with the course provider plan 84.71(d)(5)
- Failed to meet any state and local ordinances governing housing and safety for the use designated 84.90(d)

Record-Related Violations

- Failed to furnish upon request any data pertaining to student enrollments and attendance to show compliance with the legal requirements for inspection by the department 84.81(c)(1)
- Failed to show compliance with the legal requirements for inspection by authorized representatives of the department 84.81(c)(1)
- Failed to retain all student records for at least 3 years 84.81(c)(2)
- Failed to include required information in enrollment forms 84.82(c)(2)

Class C

Penalty Range:
$250 to $750 and/or up to revocation

Operations-Related Violations by a Drug and Alcohol Awareness Program

- Failed to notify the department within 15 working days of a driver training school closing 1001.451(2); 84.70(i)(1)
- Refused to cooperate with an investigation by an authorized representative of the department 60.23(a)(3)
- Failed to perform instruction in location approved by the department 84.71(b)
- Failed to ensure instruction was provided by department-licensed instructors 84.71(b)
- Failed to ensure that all instructors are properly licensed with the proper endorsement 84.71(d)(1)
- Failed to prohibit an instructor from giving instruction or prohibit a student from receiving instruction if that instructor or student is using or exhibits any evidence or effect of an alcoholic 84.71(d)(2)

beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical	
• Provided instruction or allow instruction to be provided in courses not on the school's list of approved courses	84.71(d)(3)
• Completed, issued, or validated a certificate of program completion for a person who had not successfully completed the entire course	84.71(d)(4)
• Failed to develop and maintain a means to ensure the security and integrity of student information in transit and at rest	84.71(d)(6)
• Failed to develop and maintain a means to ensure the privacy of student data and make the corporate privacy policy available to all course students	84.71(d)(7)
• Failed to ensure that no drug or alcohol awareness program is taught in any location where alcohol is present	84.90(j)

Facility-Related Violations

• Conducted a course in a facility not approved by the department	84.90(a)
• Failed to meet the use requirements of the maximum number of current students	84.90(c)
• Failed to ensure classroom facilities, when used for instruction, met all requirements	84.90(e)
• Failed to provide designated instructional areas that ensure students are able to see and hear the instructor and audiovisual aids	84.90(f)

Class D

Penalty Range:
$1,000 and/or revocation

• Failed to comply with an order of the executive director or commission	51.353(a)
• Instructor failed to meet a requirement for issuance of or holding a license	1001.455(a)(1)
• Instructor permitted or engaged in misrepresentation, fraud or deceit in applying for obtaining a certificate, license or permit	1001.455(a)(2)
• Instructor induced fraud or fraudulent practices in an action between the application for a driver's license or permit	1001.455(a)(3)
• Instructor permitted or engages in any other fraudulent practice in an action between the applicant or license holder and the public	1001.455(a)(4)

This agency hereby certifies that this notice been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-201803205
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: July 26, 2018

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Texas Lottery Commission

Scratch Ticket Game Number 2086 "10 Grand"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2086 is "10 GRAND". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2086 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2086.

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 Prize Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 10X SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $40.00, $100 and $10,000.

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. 2086 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
10X SYMBOL	WINX10
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$40.00	FRTY$
$100	ONHN
$10,000	10TH

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 (2086), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2086-0000001-001.

H. Pack - A Pack of the "10 GRAND" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

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 "10 GRAND" Scratch Ticket Game No. 2086.

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 "10 GRAND" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 14 (fourteen) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 14 (fourteen) 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 14 (fourteen) 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 14 (fourteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 14 (fourteen) 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. A Ticket can win up to six (6) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Non-winning YOUR NUMBERS Play Symbols will all be different.

E. The "10X" (WINX10) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spot.

F. Each Ticket will have two (2) different WINNING NUMBERS Play Symbols.

G. The "10X" (WINX10) Play Symbol will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never appear more than two (2) times.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "10 GRAND" Scratch Ticket Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $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 prize. 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 "10 GRAND" Scratch Ticket Game prize of $10,000, 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 "10 GRAND" 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 "10 GRAND" 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 "10 GRAND" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2086. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2086 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,033,600	8.82
$2	608,000	15.00
$5	121,600	75.00
$10	60,800	150.00
$20	60,800	150.00
$40	14,478	629.92
$100	1,520	6,000.00
$10,000	6	1,520,000.00

*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 4.80. 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. 2086 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 Games 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. 2086, 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-201803286
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 31, 2018

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Scratch Ticket Game Number 2087 "$25,000,000 Payout"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2087 is "$25,000,000 PAYOUT." The play style is "key number match."

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2087 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2087.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STACK OF BILLS SYMBOL, STAR SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $2,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2087 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV

38	TRET
39	TRNI
40	FRTY
STACK OF BILLS SYMBOL	WIN
STAR SYMBOL	WINALL
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$2,000	TOTH
$100,000	100TH

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-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2087), 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: 2087-0000001-001.

H. Pack - A Pack of "$25,000,000 PAYOUT" Scratch Ticket Games contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$25,000,000 PAYOUT" Scratch Ticket Game No. 2087.

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 "$25,000,000 PAYOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "STACK OF BILLS" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "STAR" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 44 (forty-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;

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 44 (forty-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 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) 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. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have four (4) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "STACK OF BILLS" (WIN) and "STAR" (WINALL) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "STAR" (WINALL) Play Symbol will only appear as dictated by the prize structure.

I. On Tickets that contain the "STAR" (WINALL) Play Symbol, none of the WINNING NUMBERS Play Symbols will match any of the YOUR NUMBERS Play Symbols and the "STACK OF BILLS" (WIN) Play Symbol will not appear.

J. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "$25,000,000 PAYOUT" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$25,000,000 PAYOUT" Scratch Ticket Game prize of $2,000 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 "$25,000,000 PAYOUT" 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code; or

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$25,000,000 PAYOUT" 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 "$25,000,000 PAYOUT" 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 7,680,000 Scratch Tickets in Scratch Ticket Game No. 2087. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2087 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	921,600	8.33
$10	512,000	15.00
$15	204,800	37.50
$20	204,800	37.50
$50	102,400	75.00
$100	31,808	241.45
$500	512	15,000.00
$2,000	30	256,000.00
$100,000	6	1,280,000.00

*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 3.88. 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. 2087 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. 2087, 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-201803287
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 31, 2018

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Texas Board of Nursing

Correction of Error

The Texas Board of Nursing adopted amendments to 22 TAC §§215.2 - 215.4, 215.6 - 215.11, and 215.13 in the August 3, 2018, issue of the *Texas Register* (43 TexReg 5074). Due to a Texas Register editing error, the word "clarify" was missing from the second sentence in the paragraph of the preamble. The paragraph should read as follows:

"The Texas Board of Nursing (Board) adopts amendments to §§215.2 - 215.4, 215.6 - 215.11, and 215.13. The amendments are adopted with nonsubstantive changes to clarify references in the proposed text as published in the June 1, 2018, issue of the *Texas Register* (43 TexReg 3553). These rules will be republished."

TRD-201803264

♦ ♦ ♦

Public Utility Commission of Texas

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 July 27, 2018, in accordance with Public Utility Regulatory Act §§54.151 - 54.156.

Docket Title and Number: Application of 3 Rooms Communications LLC for a Service Provider Certificate of Operating Authority, Docket Number 48554.

The Application: Applicant seeks to provide data only facilities-based and resale telecommunications services throughout the local access and transport area of Dallas and Waco.

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 August 16, 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 48554.

TRD-201803288
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2018

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 23, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Southwest Environmental Resources and the City of Rosenberg for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fort Bend County, Docket Number 48538.

The Application: Southwest Environmental Resources and the City of Rosenberg filed an application for the sale, transfer, or merger of facilities and certificate rights in Fort Bend County. If approved, Southwest Environmental Resources will transfer to the City of Rosenberg the 28-lot Parkplace Southwest subdivision water service area under certificate of convenience and necessity number 11648. The transfer includes approximately 40.30 acres and 28 current 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 48538.

TRD-201803242
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 2018

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 24, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Summit Ridge, LLC and Bandera East Utility, LP for Sale, Transfer, or Merger of Facilities and Certificate Rights in Medina County, Docket Number 48541.

The Application: The applicants entered into an asset purchase agreement in which Bandera East Utility, LP will purchase the water assets of Summit Ridge, LLC. Summit Ridge, LLC's certificate of convenience and necessity (CCN) number 13264 will be cancelled and assets will be transferred to Bandera East Utility, LP's CCN number 13118. The transfer includes approximately 850 acres and 0 current 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 48541.

TRD-201803260
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 2018

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 25, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Chambers Meadow Estate Water Company and HILCO United Services, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Ellis County, Docket Number 48543.

The Application: Chambers Meadow Estate Water Company and HILCO United Services, Inc. filed an application for the sale, transfer, or merger of facilities and certificate rights in Ellis County. The applicants entered into an asset purchase agreement in which Chambers Meadow will sell substantially all of its water system assets and certain real property to HILCO. Chambers Meadow's certificate of convenience and necessity (CCN) number 12459 will be cancelled and assets will be transferred to HILCO's CCN number 12988. The transfer includes approximately 530 acres and 57 current 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 48543.

TRD-201803263
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 30, 2018

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 26, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Marilee Special Utility District and the City of Celina for Sale, Transfer, or Merger of Certificate Rights in Collin County, Docket Number 48550.

The Application: Marilee Special Utility District (Marilee SUD) and the City of Celina filed an application for the sale, transfer, or merger of facilities and certificate rights in Collin County. If approved, a portion of the Marilee SUD water certificate of convenience and necessity number (CCN) 10150 will be transferred to the City of Celina CCN 12667. The transfer includes approximately 2,255 acres and 13 current 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 48550.

TRD-201803301
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2018

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Notice of Application to Amend 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 July 20, 2018, in accordance with Public Utility Regulatory Act §§54.151 - 54.156.

Docket Title and Number: Application of Sprint Communications Company L.P. to Amend a Certificate of Operating Authority, Docket No. 48536.

Sprint Communications Company L.P. (Sprint Communications) seeks approval to amend certificate of operating authority 50009 to reflect a change in ownership and control. Applicants request an amendment to reflect Sprint Communications becoming a wholly owned subsidiary of T-Mobile USA, Inc.

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 August 17, 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 48536.

TRD-201803259
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 2018

♦ ♦ ♦

Notice of Application to Amend 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 July 26, 2018, in accordance with Public Utility Regulatory Act §§54.151 - 54.156.

Docket Title and Number: Application of Matrix Business Technologies, Trinsic Communications, Excel Telecommunication and Lingo Communications, LLC to Amend Service Provider Certificates of Operating Authority, Docket No. 48549.

The Application: Matrix Telecom, LLC doing business as Matrix Business Technologies, Trinsic Communications, and Excel Telecommunication (Matrix) and Lingo Communications, LLC seek approval to amend service provider certificates of operating authority 60108, 60868, and 60923 to reflect a change in ownership and control where Matrix will become a subsidiary of Lingo Communications, LLC.

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 August 23, 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 48549.

TRD-201803302
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2018

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Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on July 27, 2018, to relinquish designation as an eligible telecommunications carrier (ETC).

Docket Title: Petition of MCImetro Access Transmission Service Corp. to Relinquish its Eligible Telecommunications Carrier Designation, Docket Number 48553.

The Application: MCImetro Access Transmission Services Corp. dba Verizon Access Transmission Services (MCImetro) notified the commission that it seeks to relinquish its eligible telecommunications carrier (ETC) designation in service areas in which at least one other ETC is serving. MCImetro's designated ETC service areas include each of the wire centers included on exhibit A to its petition. MCImetro informed the Commission that it will no longer provide the Lifeline discount to its approximately 256 subscribing customers, effective February 28, 2019, and that it will not accept new orders for the service after November 1, 2018. MCImetro stated that customers deciding to switch providers to maintain the Lifeline discount (now or later) will have competitive ETC options.

Persons who wish to intervene in the proceeding or comment upon the action sought should notify the Public Utility Commission of Texas as a deadline to intervene will be established. 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 Commission's Office of Customer Protection 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 48553.

TRD-201803284
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2018

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Notice of Request for a Certificate of Convenience and Necessity Name Change

Notice is given to the public of a request filed on July 25, 2018, with the Public Utility Commission of Texas (commission) for a certificate of convenience and necessity name (CCN) change.

Docket Style and Number: Application of CS Water Corporation (formerly known as Cedar Shores Water Corporation) for a Certificate of Convenience and Necessity Name Change, Docket Number 48545.

The Application: CS Water Corporation, formerly known as Cedar Shores Water Corporation, filed a request to change the name on its CCN to CS Water Corporation. Cedar Shores Water Corporation holds certificate number 11441.

Persons wishing to intervene or 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. A deadline for intervention in this proceeding will be established. 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 48545.

TRD-201803258
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 2018

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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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