TEXAS REGISTER

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

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

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THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0312-KP

Requestor:

The Honorable Ana Markowski Smith

Val Verde County Attorney

207 East Losoya Street

Del Rio, Texas 78840

Re: Whether section 74.104 of the Government Code limits the commissioners court in setting salaries of the court coordinator and assistant court coordinator for a district court (RQ-0312-KP)

Briefs requested by November 22, 2019

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

TRD-201904019

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: October 29, 2019

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TEXAS

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.101, 81.104, 81.107, 81.112, 81.120, 81.123, 81.130

The Office of the Secretary of State (SOS) proposes amendments to Chapter 81, Subchapter F, Primary Elections. The amendments concern the financing of the 2020 primary elections with state funds, including the determination of necessary and appropriate expenses relating to the proper conduct of primary elections by party officials, county election officers, and voting system vendors and the procedures for requesting reimbursement by the parties, counties, and voting system vendors for such expenses. In addition, these amendments incorporate changes mandated by the 86th Texas Legislature.

Section 81.101 is being amended to make it permissive for voting system vendors to submit primary and runoff estimate costs. The proposed amendments also remove references to spreadsheets and incorporate references to electronic submissions, which may include spreadsheets or other electronic formats prescribed by the SOS. In addition, the proposed amendments add language allowing the state chair to act as a fiscal agent of the county chair pursuant to H.B. 2640, 86th Texas Legislature.

Section 81.104 is being amended to remove county chair signature requirements for checks drawn against the primary bank account for certain expenditures.

Section 81.107 is being amended to add a reference to §81.119 regarding county chair compensation forfeiture.

Section 81.112 is being amended to clarify references to county and state chair where the language is clearly intended to refer to one or the other. The proposed amendments also add language to make it clear that changes to the electronic system prescribed by the SOS after certain deadlines must be reported to the state chair and to the SOS. Additional clarifying language states that candidate statuses will be updated automatically after the canvass results are recorded in the electronic system prescribed by the SOS, and that the chair can update statuses manually after the canvass. The rule regarding extended filing deadlines is amended to distinguish between state chair and county chair responsibilities and to accommodate notification requirements, including web postings, pursuant to H.B. 2640, 86th Texas Legislature. Lastly, the proposed amendments add a paragraph regarding county executive committee vacancies pursuant to H.B. 2640, 86th Texas Legislature.

Section 81.120 is being amended to accommodate an increase to election worker pay and delivery fees.

Section 81.123 is being amended to clarify a heading in the graphic.

Section 81.130 is being amended to include a specific reference to non-county-owned equipment and to reflect that primary funds cannot be used for the leasing of non-county-owned equipment to conduct non-joint primaries, in accordance with the General Appropriations Act, 86th Texas Legislature.

The proposed amendments are necessary for the proper and efficient conduct of the 2020 primary elections. It is in the public interest to establish adequate procedures to ensure the most efficient use of state funding.

Keith Ingram, Director of Elections, has determined that, for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules and no anticipated effect on a local economy.

Mr. Ingram has also determined that, for each year of the first five years the proposed amended rules are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be the proper conduct of the 2020 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

In addition, the SOS has determined that Texas Government Code §2001.0045(b) is not applicable. The proposed amendments to Chapter 81, Subchapter F do not impose costs on any regulated persons. As a result, the SOS is not required to take any additional action under Texas Government Code §2001.0045.

Furthermore, Mr. Ingram has determined that for each year of the first five years the proposed amendments are in effect, the rules will have the following impact on government growth. The proposed rules will not create or eliminate any government programs and will not create or eliminate any employee positions. Additionally, the proposed rules will not have an effect on appropriations to the agency or result in an increase or decrease in fees paid to the SOS. The proposed rules do not create new regulations; rather, they clarify and expand upon existing rules, as summarized in this preamble. The proposed rules neither increase nor decrease the number of individuals subject to the

applicability of the rules. Finally, the proposed rules are not anticipated to have a significant effect on the state's economy.

Written comments on the proposal may be submitted to the Office of the Secretary of State, Keith Ingram, Director of Elections, P.O. Box 12060, Austin, Texas 78711. Comments may also be sent via e-mail to elections@sos.texas.gov. For comments submitted electronically, please include "Proposed 2020 Primary Rules" in the subject line. Comments must be received no later than twenty (20) days from the date of publication of the proposal in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rules. Questions concerning the proposed rules may be directed to Elections Division, Office of the Secretary of State, at (512) 463-5650.

The amendments are proposed under Texas Election Code §31.003, which provides the SOS with the authority to obtain and maintain uniformity in the application, operation, and interpretation of provisions in the Texas Election Code and other election laws. Texas Election Code §31.003 also allows the SOS, in performing such duties, to prepare detailed and comprehensive written directives and instructions relating to and based on such laws. The rule changes are also proposed under Texas Election Code §173.006, which authorizes the SOS to adopt rules consistent with the Texas Election Code that facilitate the holding of primary elections within the amount appropriated by the legislature for that purpose. In addition, other sections within Chapters 172 and 173 of the Texas Election Code, including §§172.029, 172.117, and 172.122, provide the SOS with rulemaking authority by their terms.

No other sections are affected by the proposed rules.

§81.101. Primary and Runoff Election Cost Reporting; Receipt of State Funds.

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

(1) SOS--Office of the Secretary of State.

(2) Primary--An election held by a political party under Chapter 172 of the Texas Election Code to select its nominees for public office, and, unless the context indicates otherwise, the term includes a presidential primary election.

(3) Runoff--An election held to determine the nomination if no candidate for nomination to a particular office receives the vote required for nomination in the general primary election.

(4) County election officer--County election administrator, county clerk, or county tax assessor-collector, depending on the county, responsible for election duties in the county.

(5) Vendor--Any company with a voting system certified for use in Texas by the SOS.

(b) This subchapter applies to the use and management of all primary funds.

(c) Approval by the Secretary of State (SOS) [(~~"SOS"~~)] of a primary cost estimate does not relieve the recipient of primary funds including, but not limited to, the state chair of a political party, the county chair of a political party, the county election officer, or a voting system vendor, of their responsibility to comply with administrative rules issued by the SOS, or with any statute governing the use of primary funds.

(d) The SOS shall provide a primary cost estimate for each county political party broken into three categories, as applicable:

(1) The SOS will provide an estimate for each expense incurred by the county chair based on 75% of the final approved "non-contracted" costs less non-state appropriated financing sources (e.g., filing fees) for the most recent comparable election for which data is available as determined by the SOS. In order to receive the primary estimate payment, the chair must submit to the SOS a primary cost estimate via the online primary finance system prescribed by the SOS. If data is not available to create a pre-populated cost estimate or if the chair wishes to amend the pre-populated estimate, the chair may enter the appropriate data in the SOS online primary finance system.

(2) The SOS will provide an estimate for each expense incurred by the county election officer based on 75% of the final approved "contracted" costs for the most recent comparable election for which data is available as determined by the SOS. In order to receive the primary estimate payment, the county election officer must submit to the SOS a primary cost estimate via the online primary finance system prescribed by the SOS. If data is not available to create a pre-populated cost estimate or if the county election officer wishes to amend the pre-populated estimate, the county election officer may enter the appropriate data in the SOS online primary finance system.

(3) Pursuant to §173.0833 of the Texas Election Code, vendors that provide services and materials for use in a primary election shall bill [~~invoice~~] the SOS directly if the vendor opts to receive an estimate payment. [~~That data will be imported by the SOS into the appropriate county party primary cost estimate.~~] The submission [~~spreadsheet~~] shall comply with the following requirements:

(A) In October preceding the March primary election, vendors shall submit, [~~a single, comprehensive spreadsheet~~] in the electronic format prescribed by the SOS, [~~that includes~~] data for each county primary election for which the vendor is providing services or materials.

(B) Only expenses that are billable to the primary fund may be included. Expenses including, but not limited to, early voting kits and supplies, "I Voted" stickers, and party convention supplies, must appear on a separate invoice billed to the county election officer or the party, as appropriate.

(C) If a cost is to be split between both parties, the split costs must be reported [~~appear~~] separately [~~on the spreadsheet~~].

(D) The vendor must identify whether the county chair or the county election officer is ordering the service. The county chair earns five (5) percent calculated against the cost of the services ordered by the chair, which is paid out by the SOS to the county chair as part of the final cost report, and the county election officer earns ten (10) percent of the cost of the services ordered by the county election officer, which is included in the estimate and final payments issued by SOS.

(E) The SOS will not make estimates available to the county chairs or the county election officers until the SOS receives the vendor submission [~~spreadsheet~~] described in this section.

(e) If a runoff election is conducted, the estimate payments will be calculated and paid following the same process prescribed in subsection (d) of this section with the following exceptions:

(1) Filing fees are not factored into the calculation.

(2) The vendor must provide [~~SOS with a comprehensive spreadsheet~~] of the estimated runoff costs in the electronic format prescribed by the SOS within five (5) days after the date of the canvass of the primary election results.

(f) After the primary or runoff election, as applicable, the actual expenditures must be reported to SOS as follows:

(1) The vendors must submit data in the electronic format prescribed by the SOS [~~a comprehensive spreadsheet~~] that identifies the final costs and includes all applicable fields prescribed by the SOS.

(A) Only expenses that are billable to the primary fund may be included. Expenses including, but not limited to, early voting kits and supplies, "I Voted Stickers", and party convention supplies, must appear on a separate invoice billed to the county election officer or the party, as appropriate.

(B) If a cost is to be split between both parties, the split costs must be reported [~~appear~~] separately [~~on the spreadsheet~~].

(C) The vendor must identify whether the county chair or the county election officer is ordering the service. The county chair earns five (5) percent calculated against the cost of the services ordered by the chair, and the county election officer earns ten (10) percent of the cost of the services ordered by the county election officer.

(D) The SOS will not make final payments to the county chairs or the county election officers until the SOS receives the vendor submission [~~spreadsheet~~] described in this section.

(2) The county chair and the county election officer, if an election service contract is executed between the county executive committee and the county election officer, must submit actual expenditures in the electronic format [~~via the online primary finance system~~] prescribed by the SOS.

(A) Costs incurred by the county chair shall be reported to the SOS by the county chair. Those costs will be calculated consistent with §81.119 of this chapter (relating to County Chair Compensation).

(B) Costs incurred by the county election officer shall be reported to the SOS by the county election officer. Those costs will be calculated consistent with §81.131 of this chapter (relating to Contracting with the County Election Officer).

(g) Section 173.0832 of the Texas Election Code provides for direct payment from the SOS to a county election officer who conducts a primary election under an election services contract. The SOS requires all county election officers conducting election services for a primary election to receive direct payment from the SOS.

(h) Pursuant to §173.0341 of the Texas Election Code, a state chair, or the designee of a state chair, may enter into an agreement with a county chair, utilizing a form prescribed by the SOS, under which the state chair will act as a fiscal agent for the county party.

§81.104. Signature on Checks; Authorization of Primary-Fund Expenditures.

(a) Except as provided by this section, the county chair, or an authorized agent of the county chair, shall sign all checks drafted on the primary-fund account.

(b) The county chair must authorize all primary-fund expenditures.

[~~(c) The county chair must sign all of the following drawn on a primary-fund account:~~]

[~~(1) checks issued for an amount of $1,000 or greater;~~]

[~~(2) payroll checks to administrative personnel; and~~]

[~~(3) checks to sole-source vendors.~~]

(c) [~~(d)~~] The county chair or an authorized agent shall not sign a check drawn on a primary-fund account with a rubber stamp or other facsimile of the signature.

§81.107. Primary-Fund Records.

(a) The county chair shall preserve all records relating to primary-election expenses until the later of:

(1) 22 months following the primary elections; or

(2) the conclusion of any relevant litigation or official investigation.

(b) In order to receive approval of a final cost report, the county chair shall transmit copies of receipts, bills, invoices, contracts, competitive bids, petty-cash receipts for items and services and copies of all monthly bank statements, electronic bookkeeping records (i.e., Quicken or Quickbooks) or check register, and any other related materials documenting primary-fund expenditures. Purchase requisitions are not considered receipts and may not be remitted as such. The SOS reserves the right to request all receipts and related documentation.

(c) Unless otherwise provided by the SOS, not later than August 31 of the year in which the primary elections occur, the county chair shall:

(1) comply with all final cost reporting requirements;

(2) return all unexpended and uncommitted primary funds upon SOS approval of the final cost report.

(d) Failure to comply with subsection (c) of this section may result in forfeiture of county chair compensation as stipulated in §81.119 of this chapter (relating to County Chair's Compensation).

(e) [~~(d)~~] If the chair does not file a final cost report, the matter may be reported to the Attorney General's Office for misappropriation of funds in accordance with §81.113 of this chapter (relating to Misuse of State Funds).

§81.112. List of Candidates and Filing Fees.

(a) Submission of information.

(1) Submission of filed application. Pursuant to §§172.029, 172.117, and 172.122 of the Texas Election Code, for each general primary election, all state and county chairs shall electronically submit information about each candidate who files with the chair an application for a place on the ballot, including an application for the office of a political party, and shall certify the returns and the final list of candidates by electronic affidavit through the electronic submission service prescribed by SOS referenced in paragraph (2) of this subsection.

(2) Method of submission. The chair shall submit candidate information through an electronic submission service prescribed by the SOS. The SOS shall maintain the submitted information in an online database, in accordance with §172.029(b) of the Texas Election Code. The SOS is not responsible for the accuracy of the information submitted by the chair; the SOS is responsible only for providing the electronic submission service, displaying the information publicly on its website, and maintaining the online database.

(3) Information required for submission. The electronic submission service will notate the types of information that must be inputted for a complete submission of candidate information. However, the chair must submit any and all information on the candidate's application for which there is an applicable entry field on the electronic submission service.

(4) Submission deadline. A chair shall submit a candidate's information and a notation of each candidate's status not later than 24

hours after the chair completes the review of the candidate's application, in accordance with §172.029 of the Texas Election Code. By not later than the 8th day after the regular filing deadline, the chair shall submit a candidate's information and a notation concerning the candidate's status for all candidates who filed, in accordance with §172.029 of the Texas Election Code. The county chair will not be able to make modifications to the submitted information or notations on or after the 9th day after the regular filing deadline. If modifications to a candidate's information or notation are required on or after the 9th day after the regular filing deadline, such changes must be made by the state chair after notifying the SOS.

(5) Submission of nominee by executive committee. If a candidate is nominated by the appropriate executive committee for a place on the general election ballot in accordance with §145.036 or §202.006 of the Texas Election Code, the appropriate county chair shall notify the state chair who shall submit the candidate's information and notation through the electronic submission service prescribed by the SOS, in accordance with §172.029 of the Texas Election Code. The submission of the candidate's information and notation shall be completed not later than 5 p.m. on the 71st day before general election day to allow for the preparation of the general election ballot by the authority printing the ballots.

(6) Time for notations. For candidates not updated automatically after the canvass results are recorded in the electronic submission service prescribed by the SOS, the [~~The~~] county chair will be able to update notations to describe the status of each candidate [~~beginning the first day~~] after the canvass [~~day of the primary election~~]. If modification to the notation is needed, the appropriate chair will update the candidate information to reflect the candidate's status from the list of notations available. The notations must be complete and accurate not later than 5 p.m. on the 71st day before general election day to allow for the preparation of the general election ballot by the authority printing the ballots.

(b) Notification of filing.

(1) County chair: delivery of candidate list. Upon submission of information for all candidates who filed and whose applications have been reviewed and accepted for a place on the ballot, the county chair shall notify the applicable county election officer that candidate information has been submitted for all candidates, in accordance with §172.029 of the Texas Election Code. Notification may be sent by email, regular mail, or personal delivery, so long as it is delivered by no later than the 9th day after the regular filing deadline.

(2) State chair: notification of submission. Upon submission of information for all candidates who filed and whose applications have been reviewed and accepted for a place on the ballot, the state chair shall notify the applicable county chairs that candidate information has been submitted for all candidates, in accordance with §172.028 and §172.029 of the Texas Election Code. Notification may be sent by email, regular mail, or personal delivery, so long as it is delivered by no later than the ninth day after the regular filing deadline.

(3) Extended Filing Notification. Pursuant to §172.055 of the Texas Election Code, the applicable filing authority shall provide the necessary extended filing notifications, including sending the notice to post on he county's website or the Secretary of State's website, as applicable. Pursuant to §172.056(b) of the Texas Election Code, for races in which the state chair is the filing authority, the state chair shall notify the applicable county chairs and the applicable county election officers[~~, or the state chair, as applicable,~~] that a candidate filed an application that complied with the applicable requirements during the extended filing period, and the candidate information has been submitted in accordance with §172.029 of the Texas Election Code. For races in which the county chair is the filing authority, the county chair shall notify the applicable state chair and the applicable county election officer that a candidate filed an application that complied with the applicable requirements during the extended filing period, and the candidate information has been submitted in accordance with §172.029 of the Texas Election Code. Notification shall be made by email, regular mail, or personal delivery.

(4) Court order. If a court orders a candidate's name to be placed on the ballot or removed from the ballot, the chair shall immediately notify the state chair.

(c) Public display and failure to submit.

(1) Public display of information. The SOS will publicly display on its website a limited portion of the information submitted by the chair. For candidates for public office, the SOS will publicly display, via its website, the candidate's name, any public mailing address and any electronic mail address at which the candidate receives correspondence relating to the candidate's campaign provided by the candidate pursuant to §141.031(a)(4)(M) of the Texas Election Code, and office sought, along with the office's corresponding precinct, district or place. For candidates for the office of a political party, the website will publicly display the name of the chair and, if applicable, the corresponding numeric identifier.

(2) Failure to submit information. If a county chair fails to electronically submit candidate information for all candidates who filed and whose applications have been reviewed and accepted for a place on the ballot, the chair is directly responsible for delivering a certified list of all candidates to the state chair to comply with the electronic submission requirements of §172.029 of the Texas Election Code on behalf of the county chair.

(d) County executive committee. In the case of a vacancy on a county executive committee, the county chair shall submit the replacement member's name through the electronic submission service prescribed by the SOS pursuant to §171.024 of the Texas Election Code.

§81.120. Compensation for Election-Day Workers.

(a) Except as provided by subsection (b) of this section, the compensation paid to polling-place judges, clerks, early-voting-ballot board members, or persons working at the central counting station for the general-primary and primary-runoff elections shall be equal to the hourly rate paid by the county for such workers in county elections up to not exceed $12 [~~$8.00~~] per hour from the primary fund. All workers must attend a training class certified by the SOS. Online pollworker training classes are available on the SOS website.

(b) The county chair may pay technical support personnel at the central counting station (appointed under Texas Election Code §§127.002, 127.003, or 127.004) compensation which is more than $12 [~~$8.00~~] per hour, but costs may not exceed those paid to county staff for comparable work.

(c) Except as provided by this section, a judge or clerk may be paid only for the actual time spent on election duties performed in the polling place or central counting station. If an election worker elects to donate his or her compensation to the county party, signed documentation referencing that fact, by the election worker and chair, must be placed in the primary records.

(d) The county chair may allow one election worker from each polling place up to one hour before election day to annotate the precinct list of registered voters.

(e) The county chair is authorized to pay members of the early voting ballot board.

(1) Members of the early voting ballot board may only be compensated for the actual number of hours worked up to $12 [$8.00] per hour from the primary fund.

(2) Additionally, members may reconvene to process provisional or late ballots. The provisional ballot/late counting process must be completed not later than the 7th day after the primary or runoff primary elections.

(f) Compensation for the election judge or clerk who delivers and picks up the election supplies on election day may not exceed $25 [$15] per polling place location.

(g) Except as provided by subsection (f) of this section the county chair may not pay an election-day worker for travel time, delivery of supplies, or attendance at the precinct convention.

§81.123. Administrative Personnel and Overall Administrative Costs Limited.

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections.

(c) Pursuant to §81.114 of this chapter (relating to Conflicts of Interest), no member of the county chair's family may be paid an administrative salary from primary funds.

(d) If administrative personnel are utilized, salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than November 1 immediately preceding the primary election and ending no later than the last day of the month in which the primary election or runoff primary election, if applicable, is held.

(e) If the county chair contracts with third parties or the county election officer for election services, the overall administrative personnel costs to be submitted to the SOS for reimbursement cannot include administrative expenses provided by third parties or a county election officer. (Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.)

(f) The SOS may disallow full payment for administrative personnel if it is determined that the contracting county election officer substantially performed the conduct of the election.

(g) Other administrative costs chargeable to the primary fund include office rental, telephone and utilities, office furniture and equipment rental, computer purchase, office supplies, and bank fees.

(h) In addition to the limitations set forth in the Texas statutes and Subchapters F and G of this chapter of the Texas Administrative Code, including but not limited to §§81.127, 81.128, and 81.129 of this chapter (relating to Office Equipment and Supplies, Telephone and Postage Charges, and Office Rental), the funding caps illustrated in Figure: 1 TAC §81.123(h) apply to the total administrative expenses a county chair may charge to the primary fund.

Figure: 1 TAC §81.123(h)

[Figure: 1 TAC §81.123(h)]

§81.130. Payment for Use of County-Owned and Non-County-Owned Equipment.

(a) Section 123.033 [§123.033] of the Texas Election Code provides for the rental rate that a county may charge for the use of its equipment. (The rental rates are $5 for each unit of tabulating equipment and $5 for each unit of electronic voting system equipment installed at a polling location.) Removable components, such as a flash drive or accessibility component, may not be charged separately.

(b) In addition to subsection (a) of this section, the primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

(c) The county chair shall submit all calculations for amounts charged for the use of county-owned and non-county-owned equipment to the SOS for review with the final cost report.

(d) The county chair shall not use primary funds to pay expenses related to the use of non-county-owned equipment, including, but not limited to, ballot boxes and voting booths pursuant to §51.035 of the Texas Election Code, without approval from the SOS.

(e) Pursuant to §51.035 of the Texas Election Code, counties may not charge the county parties for use of county-owned voting booths or ballot boxes and other county-owned equipment where there is no statutory authority to charge for said equipment; however, the primary fund may pay the actual expenses incurred by the county in transporting the equipment to and from the polling places if the county provides that service.

(f) Pursuant to the General Appropriations Act, 86th Texas Legislature, primary funds shall not be used to pay the costs of leasing non-county-owned equipment that is needed to conduct non-joint primary elections.

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 October 28, 2019.

TRD-201904003
Adam Bitter
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 463-5650

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS SUBCHAPTER U. CITRUS CANKER QUARANTINE

4 TAC §§19.400 - 19.408

The Texas Department of Agriculture (the Department or TDA) proposes new Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §§19.400 - 19.408. The new sections are proposed to establish requirements and restrictions necessary to address dangers posed by destructive strains of citrus canker in parts of Brazoria, Cameron, Fort Bend, and Harris counties.

Citrus canker is a non-systemic plant disease caused by strains or pathotypes of the bacterium *Xanthomonas citri* subsp. *citri.* The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and can predispose fruit to secondary infection by decay organisms. The marketability of symp-

tomatic fresh fruit is greatly reduced compared to non-infected fruit.

Citrus canker lesions are 2-10 mm in diameter and may appear within 14 days following host inoculation; however, symptoms may take several weeks to a few months to appear, especially at lower temperatures which increase the latency of the disease. Citrus canker bacterium can stay viable on the tree or soil for several months in old lesions on leaves, branches and other plant surfaces. *X. citri* subsp. *citri* is spread by wind-borne rain, splashing water, movement of infected plant material or mechanical contamination.

The detection of plants infected with citrus canker necessitates a response by the Department in order to quickly destroy infected plants and prevent the spread of citrus canker. The Department promptly destroys all plants anywhere in the state that are confirmed positive for any strain of citrus canker, in accordance with statute, to prevent the further spread of citrus canker. The Department also takes action necessary to aid in citrus canker eradication, including restricting the retail sale of citrus plants in quarantined areas, conducting delimiting surveys when plants are found infected with citrus canker, and increasing the inspection frequency at nurseries in quarantined areas. The proposed rules are necessary to prevent potential devastation to the Texas citrus industry.

The movement, distribution or sale of citrus plants within, into, through, or out of the quarantined areas will be regulated as a result of the proposed rules. Citrus plants, citrus fruits, and any equipment or material coming into direct contact with infected plant material will be prohibited from movement unless as authorized by the Department under conditions of a compliance agreement.

The Department strongly urges residents in, and visitors to, the quarantined areas, to be aware of citrus canker and its potential impact to the Texas citrus industry. Residents may request more information, including how they can help combat this disease, by contacting the Department, Texas A&M University (TAMU) AgriLife Extension, TAMU Kingsville-Citrus Center, USDA, or the Texas Citrus Pest and Disease Management Corporation.

Dale Scott, Director of Environmental & Biosecurity Programs, has determined that for the first five-year period the proposal is in effect, there will be minimal fiscal implications for state or local government.

Mr. Scott has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the proposed rules will be the continued growth of the Texas citrus fruit production industry and the Texas citrus nursery industry. There will be minimal economic impact on small businesses or persons required to comply with the proposed rules.

Mr. Scott has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

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

(2) no employee positions will be created, nor will any existing Department staff positions be eliminated; and

(3) there will not be an increase or decrease in future legislative appropriations to the Department.

Additionally, Mr. Scott has determined that for the first five years the proposed rules are in effect:

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

(2) new regulations, which were previously adopted on an emergency basis, will be created;

(3) there will be no expansion, limitation or repeal of existing regulations;

(4) there will be an increase in the number of individuals subject to the rule's applicability; however, these individuals were previously subject to these regulations adopted on an emergency basis; and

(5) the proposal will have a slight negative impact on the Texas economy, as there are minor costs associated with the proposal and its enforcement.

Written comments on the proposal may be submitted to Dale Scott, Director of Environmental & Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: *RuleComments@TexasAgriculture.gov.* Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The rules are proposed under the Texas Agriculture Code, §73.004, which authorizes the Department to establish quarantines against citrus diseases and pests it determines are injurious; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances and rules to provide for a program to manage or eradicate exotic citrus diseases, including citrus canker and citrus greening; and §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

Chapters 12, 71, and 73 of the Texas Agriculture Code are affected by the proposal.

§19.400. Quarantined Pest.

The quarantined pest is citrus canker, and its causal agent, the bacterial pathogen *Xanthomonas citri* subsp. *citri.* The quarantined pest is a serious plant disease that is not widely distributed in this state.

§19.401. Quarantined Areas.

(a) Quarantined areas are described in this section, and as defined on the Department's website at *www.TexasAgriculture.gov.* A map of the quarantined area is also available on the Department's website.

(b) Quarantined areas include:

(1) In Fort Bend and Harris Counties: The quarantine boundary is described as, starting at a point described as N29.7166139524 degrees and W95.6013268808 degrees, then South along Shady Breeze Drive to a point described as N29.7142932806 degrees and W95.6011334915 degrees, then East along Westpark Tollway to a point described as N29.7146800592 degrees and W95.5962987587 degrees, then South along Cook Road to a point described as N29.6763889689 degrees and W95.5959119801 degrees, then East along Bissonnet Street to a point described as

N29.6655591655 degrees and W95.5885631843 degrees, then South East along Kirkwood Road to a point described as N29.6415788853 degrees and W95.5723184784 degrees, then East along West Airport Boulevard to a point described as N29.6440929481 degrees and W95.5388621218 degrees, then South East along South Loop 8 to a point described as N29.6172118282 degrees and W95.5595547819 degrees, then West along U.S. Highway 90 to a point described as N29.629588746 degrees and W95.5922375822 degrees, then South West along Interstate Highway 69 to a point described as N29.6168250495 degrees and W95.6061616155 degrees, then South East to a point described as N29.611410147 degrees and W95.6030673847 degrees, then South West along Country Club Boulevard to a point described as N29.6048349094 degrees and W95.6104161804 degrees, then North West along William Trace Boulevard to a point described as N29.5974861137 degrees and 95.6222129303 degrees, then South West along Interstate Highway 69 to a point described as N29.6007737338 degrees and 95.6314956191 degrees, then North West along State Highway 6 to a point described as N29.6090894752 degrees and W95.6438725379 degrees, then South West along University Boulevard to a point described as N29.5936183274 degrees and W95.6492874387 degrees, then West along New Territory Boulevard to a point described as N29.5898513129 degrees and W95.6774894667 degrees, then North West along State Highway 99 to a point described as N29.6573433334 degrees and W95.7154981303 degrees, then North along Harlem Road to a point described as N29.6619612082 degrees and W95.7151429089 degrees, then East along Madden Road to a point described as N29.6620781561 degrees and W95.7057571299 degrees, then North to a point described as N29.6688467839 degrees and W95.7059505183 degrees, then East to a point described as N29.6688467839 degrees and W95.7028562893 degrees, then North to a point described as N29.6702005099 degrees and W95.7024695107 degrees, then East to a point described as N29.6698137304 degrees and W95.694540547 degrees, then North to a point described as N29.6707806779 degrees and W95.694540547 degrees, then East to a point described as N29.6713608449 degrees and W95.6800363467 degrees, then North to a point described as N29.683931153 degrees and W95.6810032933 degrees, then West to a point described as N29.6845113218 degrees and W95.7013091739 degrees, then North along Addicks Clodine Road to a point described as N29.7009494162 degrees and W95.7011157855 degrees, then East along Bellaire Boulevard to a point described as N29.700756026 degrees and W95.6846776911 degrees, then South along Chickory Woods Lane to a point described as N29.6984353533 degrees and W95.6846776911 degrees, then East along Espinosa Drive to a point described as N29.6982419649 degrees and W95.6792627885 degrees, then South along Caracas Drive to a point described as N29.6955345136 degrees and W95.6790693983 degrees, then East along Sinaloa Drive to a point described as N29.6959212931 degrees and W95.6765553373 degrees, then North along San Pablo Drive to a point described as N29.6966948504 degrees and W95.6755883907 degrees, then East along Alametos Drive to a point described as N29.697081629 degrees and W95.6653387553 degrees, then North East along Addicks Clodine Road to a point described as N29.7100387148 degrees and W95.6603106322 degrees, then East along Westpark Tollway to a point described as N29.7104254934 degrees and W95.653348616 degrees, then North along Cedar Gardens Drive to a point described as N29.7140998913 degrees and W95.6529618365 degrees, then East along West Bend Drive to a point described as N29.7144866699 degrees and W95.6444527058 degrees, then South East along Westpark Tollway to a point described as N29.7135197234 degrees and W95.6158310829 degrees, then North on Synott Road to a point described as N29.717000731 degrees and 95.6154443043 degrees, then East along Brant Rock Drive to the starting point.

(2) In Harris County: The quarantine boundary is described as, starting at the intersection of Stella Link Road and North Braeswood Boulevard, then westerly along North Braeswood Boulevard to its intersection with Academy Street, then northerly along Academy Street to its intersection with Merrick Street, then easterly along Merrick Street to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Blue Bonnet Boulevard, then easterly along Blue Bonnet Boulevard to its intersection with Sewanee Street, then northerly along Sewanee Street to its intersection with Glen Haven Boulevard, then easterly along Glen Haven Boulevard to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Greenbush Drive, then southerly along Greenbush Drive to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with Durhill Street, then westerly along Durhill Street to its intersection with Latma Drive, then northwesterly along Latma Drive to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Linkwood Drive, then northwesterly along Linkwood Drive to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Stella Link Road, then northerly along Stella Link Road to the starting point.

(3) In Cameron County: The quarantine boundary is described as, starting at a point described as N26.038113 degrees and W97.662765 degrees, then North to a point described as N26.039187 degrees and W97.663173 degrees, then North East to a point described as N26.042238 degrees and W97.661355 degrees, then North West to a point described as N26.043181 degrees and W97.662384 degrees, then North West to a point described as N26.045020 degrees and W97.666146 degrees, then North East to a point described as N26.073659 degrees and W97.640404 degrees, then North West to a point described as N26.077092 degrees and W97.645149 degrees, then North East to a point described as N26.088969 degrees and W97.635552 degrees, then North East to a point described as N26.101460 degrees and W97.627284 degrees, then South East to a point described as N26.094385 degrees and W97.617458 degrees, then South East to a point described as N26.091833 degrees and W97.615076 degrees, then South to a point described as N26.091833 degrees and W97.615076 degrees, then East to a point described as N26.080902 degrees and W97.581814 degrees, then East to a point described as N26.081021 degrees and W97.580814 degrees, then East to a point described as N26.080789 degrees and W97.579106 degrees, then East to a point described as N26.076239 degrees and W97.533750 degrees, then East to a point described as N26.075084 degrees and W97.523935 degrees, then East to a point described as N26.073305 degrees and W97.499314 degrees, then South to a point described as N26.052295 degrees and W97.503192 degrees, then South to a point described as N26.045394 degrees and W97.504870 degrees, then South to a point described as N26.001250 degrees and W97.508846 degrees, then South to a point described as N25.995337 degrees and W97.509319 degrees, then East to a point described as N25.993839 degrees and W97.495641 degrees, then South to a point described as N25.978458 degrees and W97.496850 degrees, then West to a point described as N25.978623 degrees and W97.505980 degrees, then West to a point described as N25.979620 degrees and W97.511963 degrees, then West to a point described as N25.978830 degrees and W97.518034 degrees, then South East to a point described as N25.967162 degrees and W97.512672 degrees, then South West to a point described as N25.966367 degrees and W97.514266 degrees, then South to a point described as N25.965469 degrees and W97.514076 degrees, then South to a point described as N25.945219 degrees and W97.516433 degrees, then South to a point described as N25.926488 degrees and W97.518082 degrees, then West to a point described

as N25.926875 degrees and W97.522045 degrees, then North West to a point described as N25.928146 degrees and W97.524315 degrees, then North West to a point described as N25.931213 degrees and W97.526867 degrees, then North West to a point described as N25.933391 degrees and W97.530618 degrees, then South West to a point described as N25.930552 degrees and W97.537073 degrees, then North West along the Rio Grande to the starting point.

(4) In Brazoria County and the adjacent area of Harris County: The quarantine boundary is described as, starting at a point described as N29.62598819 degrees and W95.266591998 degrees, then East along Almeda Genoa Road to a point described as N29.627130034 degrees and W95.249026799 degrees, then North East along Clearwood Drive to a point described as N29.632563989 degrees and W95.246256988 degrees, then North along Interstate Highway 45 to a point described as N29.651657784 degrees and W95.251359728 degrees, then East along Marleen Street to a point described as N29.652713805 degrees and W95.226735226 degrees, then South East along State Highway 3 to a point described as N29.637616657 degrees and W95.211540768 degrees, then South West along South Shaver Street to a point described as N29.626500058 degrees and W95.226619915 degrees, then South East along Interstate Highway 45 to a point described as N29.583976741 degrees and W95.181246397 degrees, then South West along Blue Spruce Vale Way to a point described as N29.571100719 degrees and W95.195038307 degrees, then North West along Beamer Road to a point described as N29.572851511 degrees and W95.199176592 degrees, then South West along Dixie Farm Road to a point described as N29.5488365 degrees and W95.245129139 degrees, then North West along Farm to Market Road 518 to a point described as N29.564863322 degrees and W95.285403451 degrees, then North along State Highway 35 to a point described as N29.581828296 degrees and W95.286188027 degrees, then East along McHard Road to a point described as N29.582386972 degrees and W95.269586196 degrees, then North East along Pearland Parkway to the starting point.

(5) In Cameron County: The quarantine boundary is described as, starting at a point described as N26.111754 degrees and W97.629239 degrees, then West to a point described as N26.111876 degrees and W97.631816 degrees, then West to a point described as N26.112673 degrees and W97.638589 degrees, then North West to a point described as N26.119140 degrees and W97.646507 degrees, then North East to a point described as N26.122306 degrees and W97.643733 degrees, then North East to a point described as N26.128848 degrees and W97.637722 degrees, then North East to a point described as N26.129103 degrees and W97.637399 degrees, then South East to a point described as N26.127637 degrees and W97.635541 degrees, then North East to a point described as N26.129075 degrees and W97.634286 degrees, then South East to a point described as N26.120157 degrees and W97.621921 degrees, then South West to the starting point.

(c) The department may designate additional or expanded quarantined areas, or a reduction of the quarantined area based upon the confirmation of the presence or absence of citrus canker. The designations will be effective upon the posting of the notification of the quarantined areas on the department's website (http://www.Texas-Agriculture.gov). Notification consists of a map and a description of the quarantined areas.

§19.402. Regulated Articles Subject to the Quarantine.

(a) For purposes of this subchapter, a regulated article is a quarantined article defined under Texas Agriculture Code, §71.0092.

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by subsection (a) of this section, when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subchapter.

(c) Any article that is described as a regulated article by Title 7, Code of Federal Regulations (CFR) §301.75-3.

§19.403. Restrictions on Movement, Sale, Distribution and Propagation of Articles Subject to the Quarantine.

(a) Movement of regulated articles.

(1) Regulated articles that are plants. Movement, sale or distribution through, within, into or from a quarantined area is prohibited, unless:

(A) authorized by the Department or USDA-APHIS-PPQ under a compliance agreement, limited permit or special permit; or

(B) within a given property, except, within 10 feet of where a plant which is symptomatic or diagnosed with citrus canker has been found, and the area has been treated according to a compliance agreement or permit issued by the Department or USDA.

(2) Regulated articles that are fruit. Regulated articles that are fruit that are moved from the property where they were produced, or are distributed or sold:

(A) must be free of leaves, stems and debris; or

(B) must be under a compliance agreement or permit issued by the Department or USDA.

(3) Fruit shall not be moved out of a quarantined area, except under a compliance agreement or special permit with the Department or the USDA.

(4) Landscapers and mowers. Landscapers and mowers servicing a quarantined area must come under a compliance agreement with the Department or USDA, and decontaminate tools, appliances and equipment by steam cleaning or by washing with an approved disinfectant prior to moving regulated articles out of the quarantined area.

(b) Transitory movement of regulated articles through a quarantined area shall be done only in a completely covered and enclosed insect-proof and water-proof container that shall not remain in the quarantined area beyond the time required for simple transit.

(c) Propagation, sale or distribution of regulated articles.

(1) Propagation and growing of any regulated articles that are plants, rootstock or budwood for movement or use inside, into or from a quarantined area shall be in certified citrus nursery facilities under the requirements and restrictions in chapter 21, subchapter D, of this title, relating to "Citrus Nursery Stock Certification Program."

(2) Certified citrus nursery facilities shall comply with structural and sanitation requirements and restrictions applicable to interstate movement from citrus canker quarantined areas, as specified in the "Interstate Movement of Citrus Nursery Stock From Areas Quarantine for Citrus Canker, Citrus Greening, and/or Asian Citrus Psyllid" as published by USDA-APHIS-PPQ.

(d) Disposal of regulated articles. Infected plants, plant parts or regulated articles that are completely covered can move out of the quarantined area for burning or burial in a landfill under a compliance agreement or permit issued by the Department or USDA.

§19.404. Ongoing Pest Management.

At all times, all citrus plants for sale or distribution must be inspected regularly for symptoms of citrus canker. If any regulated article exhibits symptoms of citrus canker:

(1) the regulated article must be held at the location from sale or distribution, pending inspection, sampling and testing by the Department, and the location must immediately notify the nearest regional Department office; and

(2) plants or plant parts that test positive for citrus canker shall be destroyed and disposed of under Department supervision.

§19.405. Citrus Fruit Harvest.

(a) Compliance agreement required. Regulated fruit from a quarantined area intended for noncommercial or commercial movement, sale or distribution, shall not be moved from the production site, except under a compliance agreement with the Department or USDA.

(b) Disinfecting of regulated fruit.

(1) Disinfecting of regulated fruit shall include chemical treatment of regulated fruit, as prescribed in the USDA Treatment Manual D301.75-11(a).

(2) Following treatment of regulated fruit in accordance with this subsection, personnel must clean their hands as prescribed in the USDA Treatment Manual D301.75-11.

(3) Vehicles, equipment and other inanimate objects must be cleaned and treated as prescribed in the USDA Treatment Manual D301.75-11(d).

§19.406. Consequences for Failure to Comply with Quarantine Requirements or Restrictions.

(a) A person who fails to comply with quarantine restrictions or requirements or a Department order relating to the quarantine is subject to administrative or civil penalties up to $10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the Department in the absence of such compliance.

(b) The Department is authorized to seize and treat or destroy or order to be treated or destroyed, any regulated article:

(1) that is found to be infested with the quarantined pest; or,

(2) regardless of whether infected or not, that is transported within, out of, or through the quarantined area in violation of this subchapter.

(c) Regulated articles seized pursuant to any Department order shall be destroyed at the owner's expense under the supervision of a Department inspector.

§19.407. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.408. Conflicts between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between geographical descriptions and representations and textual descriptions of the geographic area in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of regulated articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for exemption of compliance with the requirements of this subchapter.

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

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Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 475-0705

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.40

The Railroad Commission of Texas proposes amendments to §3.40, relating to Assignment of Acreage to Pooled Development and Proration Units. The amendments are proposed to allow the same surface acreage to be assigned to more than one well in an unconventional fracture treated (UFT) field when mineral ownership is severed at different depths below the surface.

Currently, §3.40 prohibits acreage from being assigned to more than one well in a field, except in limited circumstances. The Commission recognizes significant changes have occurred in the exploration and production industry in Texas, and certain rule changes are needed to uphold the Commission's statutory requirements to prevent waste and protect correlative rights. Specifically, the Commission has determined there are circumstances in which the assignment of acreage to more than one well in a field is necessary to prevent waste and protect correlative rights. The basis for this determination arises from primarily two factors: (1) severed ownership of mineral rights at depth, and (2) technological advances that have unlocked heretofore inaccessible hydrocarbon resources in UFT fields.

Several years ago, Commission staff and operators in certain fields began to experience difficulty in applying the language of §3.40 because many fields contain multiple productive zones within the field's overall interval. In these same fields, private lease provisions were creating horizontal severances such that undeveloped intervals were required to be returned to lessors after some period of time. These depth severances created more than one ownership interval beneath the surface. In December 2013, the Commission recognized the limitations of §3.40 as applied to the Spraberry (Trend Area) Field and signed a final order (O&G Docket No. 7C-0283443) creating a "Rule 40 Exception Field" to allow acreage in the Spraberry to be assigned twice - to a well in the shallow portion of the field and a well in the deep portion. Since 2013, the issue with depth severances has expanded so that more fields are experiencing the same limitations with §3.40. In addition, private lease agreements are creating multiple depth severances such that even allowing duplicate assignment of acreage to wells in shallow and deep portions of a field may still limit development in UFT fields. For example, private lease agreements and other land transactions for a tract

may create five or more distinct ownership intervals that vary by depth within a single field. Under current §3.40, the operator could develop one ownership interval. Under existing field rules in the Spraberry, an operator could develop two. In either scenario, at least three intervals could not be developed.

In 2016, the Commission established UFT fields to address the efficient production of hydrocarbons from reservoirs that exhibited certain "unconventional" characteristics. A UFT field is a field in which horizontal drilling and hydraulic fracturing must be used in order to recover resources from all or part of the field and which is developed using either vertical and horizontal drilling techniques. This designation includes shale formations in which the drainage of a wellbore is based upon the area reached by the hydraulic fracturing treatments rather than conventional flow patterns. That is, in UFT fields hydrocarbon fluids do not flow beyond the spatial limits of the stimulated reservoir volume. Efficient production is not dependent upon conventional reservoir structure, stratigraphy, or native reservoir properties, but on the quality and characteristics of the fracture stimulation treatments. Therefore, the Commission recognized the need for special provisions for UFT fields through the amendments to §3.86, relating to Horizontal Drainhole Wells, adopted in 2016. Similarly, the Commission now proposes amendments to §3.40 to allow the same surface acreage to be assigned to more than one well in a UFT field when mineral ownership is severed below the surface.

In preparation for this proposal, Commission staff circulated an informal draft and received several comments, which informed the proposed amendments described below. The Commission appreciates the interest and participation from stakeholders.

Proposed amendments to §3.40(d) and (e)(1) are nonsubstantive. The amendments proposed in §3.40(d) clarify the term "multiple assignment of acreage," and amendments to §3.40(e)(1) reorganize existing language related to assignment of acreage to horizontal and vertical wells.

Proposed amendments to §3.40(e)(2) provide that where ownership of the right to drill or produce from a tract in a UFT field is divided horizontally, acreage may be assigned to more than one well provided that the wells having the same wellbore profile are not completed in the same ownership interval. "Divided horizontally" means that ownership of the right to drill or produce has been divided into depth intervals defined by total vertical depth, depth relative to a specific geological contact, or some other discriminator. A tract may be "divided horizontally" even where one operator has the right to drill or produce multiple intervals on the same tract of land in the same field.

Proposed amendments to §3.40(e)(2)(A) require that an application for multiple assignment of acreage under subsection (e) show the upper and lower limits of the operator's ownership interval. The interval is measured as the total vertical depth from the surface. The Commission understands that, due to geological characteristics, the total vertical depth provided by an operator will be an approximation. However, Commission staff needs this information to conduct required due diligence before granting a drilling permit.

The proposed amendments in §3.40(e)(2)(B) require that within 15 days prior to filing its drilling permit application, an applicant for multiple assignment of acreage shall locate any well, including wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points. The applicant must use all available resources, including but not limited to the Commission's GIS well database, to find wells within the one-half mile radius. The applicant shall then send written notice of its application to the P-5 address of record of each Commission-designated operator of those wells.

Proposed amendments to §3.40(e)(2)(C) provide a right to request a hearing to a person who was entitled to notice but claims he or she did not receive it. If the Commission determines at a hearing that the applicant did not provide the notice as required by this subsection, the Commission may cancel the permit.

Proposed amendments to §3.40(e)(2)(D) provide a method for obtaining copies of directional surveys, and proposed amendments to §3.40(e)(2)(E) clarify that field density rules will apply separately to each ownership interval.

Proposed amendments to §3.40(e)(2)(F) clarify that upon the effective date of the proposed rule amendments, which will be added at such time as the amendments are adopted, existing field rules that allow assignment of acreage to more than one well in a UFT field are superseded by §3.40. Subparagraph (F) also prohibits field rule applications regarding multiple assignment of acreage in UFT fields until two years after the effective date of the proposed amendments. Several comments on the informal draft requested removing this provision. The commenters believed a ban on field rule applications would be unduly prejudicial. The Commission disagrees. Commission staff must develop and learn new procedures to implement the proposed amendments, if adopted. If, after adoption of any amendments to §3.40, field rule amendments were adopted to create different requirements for each field, then Commission staff would have to develop and learn different procedures for each field. Therefore, the Commission proposes a hold on field rule applications to allow Commission staff time to test these procedures and resolve any issues before making piecemeal changes. The amendments are proposed with a minor change to the informal draft language such that field rule applications may be submitted two years after the effective date of the rule amendments. The Commission also notes that the temporary prohibition would only apply to UFT fields and only to field rule applications addressing multiple assignment of acreage. In addition, operators would still have the opportunity to seek relief from §3.40 by applying for an exception for an individual well or lease.

Proposed new §3.40(e)(3) allows the Commission to require non-confidential information supporting the operator's right to drill or produce in the interval indicated on the operator's drilling permit application.

Proposed new §3.40(f) allows the Oil and Gas Director or the director's delegate to resolve existing instances of multiple assignment of acreage upon an operator's written request and for good cause shown. If such a request is administratively denied, the operator shall have a right to request a hearing to review the denial. The term "existing" is not meant to apply only to instances of multiple assignment of acreage existing at the time of the adoption of proposed amendments but is intended to apply to instances of multiple assignment of acreage existing at the time of the written request for relief. In other words, the relief proposed in subsection (f) can be requested for good cause when acreage is assigned to more than one well and the subject wells have already been drilled or completed.

Proposed new §3.40(g) formalizes the process for obtaining an exception to §3.40. If an operator does not qualify for multiple assignment of acreage under subsection (e), acreage cannot be assigned to more than one well unless the operator is granted

an exception after public hearing held after notice to all persons described in subsection (g).

Jason Clark, Director of Agency Projects, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be minimal fiscal implications to the Commission as a result of enforcing or administering the amendments. Any costs associated with the amendments would be due to minor programming to update online systems. There will be no fiscal effect on local government.

Mr. Clark has determined that for the first five years the proposed amendments are in effect, the primary public benefit will be increased development of resources.

Mr. Clark has determined that for each year of the first five years that the amendments will be in effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed amendments. The amendments would allow surface acreage to be assigned to more than one well in a UFT field.

The Commission has determined that the proposed amendments to §3.40 will not have an adverse economic effect on rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed amendments. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

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

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

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or effect the state's economy. The proposed amendments may increase fees paid to the agency. Because the amendments would allow increased development in UFT fields, the Commission may receive more drilling permit applications and corresponding fees.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 12:00 noon on Monday, December 9, 2019. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Clark at (512) 463-2655. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes the amendments to §3.40 pursuant to Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 102, which gives the Commission the authority to establish pooled units for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste; and Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells, preserving a record of the drilling of wells, and requiring records to be kept and reports to be made.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.201, 85.202 and Chapter 102.

Cross reference to statute: Texas Natural Resources Code Chapters 81, 85, and 102.

§3.40. Assignment of Acreage to Pooled Development and Proration Units.

(a) An operator may pool acreage, in accordance with appropriate contractual authority and applicable field rules, for the purpose of creating a drilling unit or proration unit by filing an original certified plat delineating the pooled unit and a Certificate of Pooling Authority, Form P-12, according to the following requirements:

(1) Each tract in the certified plat shall be identified with an outline and a tract identifier that corresponds to the tract identifier listed on Form P-12.

(2) The operator shall provide information on Form P-12, accurately and according to the instructions on the form.

(A) The operator shall separately list each tract committed to the pooled unit by authority granted to the operator.

(B) For each tract listed on Form P-12, the operator shall state the number of acres contained within the tract. The operator shall indicate by checking the appropriate box on Form P-12 if, within an individual tract, there exists a non-pooled and/or unleased interest.

(C) The operator shall state on Form P-12 the total number of acres in the pooled unit. The total number of acres in the pooled unit shall equal the sum of all acres in each [~~individual~~] tract listed. The total acreage shown on Form P-12 shall only include tracts in which the operator holds a leased or ownership interest in the minerals or other contractual authority to include the tract in the pooled unit.

(D) If a pooled unit contains more tracts than can be listed on a single Form P-12, the operator shall file as many additional Forms P-12 as necessary to list each pooled tract individually. The additional Forms P-12 shall be numbered in sequence.

(E) The operator shall provide the requested identification and contact information on Form P-12.

(F) The operator shall certify the information on Form P-12 by signing and dating the form.

(3) Failure to timely file the required information on the certified plat or Form P-12 may result in the dismissal of the W-1 ap-

plication. "Timely" means within three months of the Commission notifying the operator of the need for additional information on the certified plat and/or Form P-12.

(4) The operator shall file Form P-12 and a certified plat in the following instances:

(A) with the drilling permit application when two or more tracts are joined to form a pooled unit for Commission purposes;

(B) with the initial completion report if any information reported on Form P-12 has changed since the filing of the drilling permit application;

(C) to designate a pooled unit formed after a completion report has been filed; or

(D) to designate a change in a pooled unit previously recognized by the Commission. The operator shall file any changes to a pooled unit in accordance with the requirements of §3.38(d)(3) of this title (relating to Well Densities).

(b) If a tract to be pooled has an outstanding interest for which pooling authority does not exist, the tract may be assigned to a unit where authority exists in the remaining undivided interest[,] provided[,] that total gross acreage in the tract is included for allocation purposes, and the certificate filed with the Commission shows that a certain undivided interest is outstanding in the tract. The Commission may not allow an operator to assign only the operator's undivided interest out of a basic tract[,] where a nonpooled interest exists.

(c) The nonpooled undivided interest holder retains the development rights in the basic tract. If the development rights are exercised, the Commission grants authority to develop the basic tract, and the well is completed as a producing well on the basic tract, then the entire interest in the basic tract and any interest pooled with another tract shall be assigned to the well on the basic tract for allocation purposes. Splitting of an undivided interest in a basic tract between two or more wells on two or more tracts is not acceptable.

(d) Multiple assignment of acreage is not permitted, except [~~Except~~] as provided in subsection (e) of this section. Multiple assignment of acreage is defined as the assignment of the same surface acreage to more than one well in a field.[~~, acreage assigned to a well for drilling and development, or for allocation of allowable, shall not be assigned to any other well or wells completed or projected to be completed in the same field; such duplicate assignment of acreage is not acceptable.~~] However, this limitation shall not prevent the reformation of development or proration units so long as:

(1) no multiple [~~duplicate~~] assignment of acreage occurs; and

(2) such reformation does not violate other conservation regulations.

(e) In unconventional fracture treated (UFT) fields defined in §3.86 of this title (relating to Horizontal Drainhole Wells), multiple [~~duplicate~~] assignment of acreage [~~to both a horizontal well and a vertical well for drilling and development or for allocation of allowable~~] is permissible as follows:

(1) Assignment of acreage to both a horizontal well and a vertical well for drilling and development or for allocation of allowable is permissible. The field density rules apply independently to horizontal wells and vertical wells. Acreage assigned to horizontal wells shall not count against acreage assigned to vertical wells, and acreage assigned to vertical wells shall not count against acreage assigned to horizontal wells.

(A) [~~(2)~~] Acreage assigned to horizontal wells for drilling and development[,] or for allocation of allowable[,] shall be permissible [~~acceptable~~] so long as the horizontal well density complies with §3.38 of this title and/or special field rules, as applicable. For the purposes of this section, stacked lateral wells as defined in §3.86(a)(10) of this title are not considered assignment of acreage to multiple horizontal wells.

(B) [~~(3)~~] Acreage assigned to vertical wells for drilling and development[,] or for allocation of allowable[,] shall be permissible [~~acceptable~~] so long as the vertical well density complies with §3.38 of this title and/or special field rules, as applicable.

(2) Where ownership of the right to drill or produce from a tract in a UFT field is divided horizontally, acreage may be assigned to more than one well provided that the wells having the same wellbore profile are not completed in the same ownership interval. For purposes of this section "divided horizontally" means that ownership of the right to drill or produce has been separated into depth intervals defined by total vertical depth, depth relative to a specific geological contact, or some other discriminator. A tract may be "divided horizontally" even where one operator has the right to drill or produce multiple intervals on the same tract of land in the same field.

(A) To apply for multiple assignment of acreage under this subsection, the operator's drilling permit application shall indicate the upper and lower limits of the operator's ownership interval. The interval shown on the drilling permit application is measured as the total vertical depth from the surface.

(B) Within 15 days prior to filing its drilling permit application, the applicant shall locate any well, including any wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points. The applicant shall then send written notice of its application to the P-5 address of record of each Commission-designated operator of the wells determined to fall within the one-half mile radius. The applicant shall attach to the notice a certified plat that clearly depicts the projected path of the wellbore and the one-half mile radius surrounding the wellbore from the first take point to the last take point. Copies of the notice, service list, and certified plat shall be filed with the drilling permit application.

(C) If any person entitled to notice under this subsection did not receive notice, that person may request a hearing. If the Commission determines at a hearing that the applicant did not provide the notice as required by this subsection, the Commission may cancel the permit.

(D) To mitigate the potential for wellbore collisions, the applicant shall provide copies of any directional surveys to the persons entitled to notice under this subsection, upon request, within 15 days of the applicant's receipt of a request.

(E) Where ownership of the right to drill or produce from a tract in a UFT field is divided horizontally, the field density rules for the field will apply separately to each ownership interval, such that proration units on a tract above and below a division of ownership are accounted for separately.

(F) Field rules that allow assignment of acreage to more than one well in UFT fields are superseded by this rule amendment, as of the effective date of this amendment. If, prior to the effective date of this amendment, an operator has assigned acreage to more than one well pursuant to previous field rules, such multiple assignment remains valid. After the effective date of this amendment, multiple assignment of acreage is not permissible unless the applicant complies with the requirements of this subsection. The Commission will not consider any

applications for field rules regarding multiple assignment of acreage in UFT fields until two years after the effective date of this amendment.

(3) Upon request by the Commission, an operator shall provide non-confidential information supporting its right to drill or produce in the interval indicated on its drilling permit application.

~~[(4) For the purposes of this section, stacked lateral wells as defined in §3.86(a)(10) of this title are not considered duplicate assignment of acreage to multiple horizontal wells.]~~

(f) Upon an operator's written request and for good cause shown, the director or the director's delegate may resolve an existing instance of multiple assignment of acreage. If such a request is administratively denied, the operator shall have a right to request a hearing to review the denial.

(g) If an operator does not qualify for multiple assignment of acreage under subsection (e) of this section, acreage cannot be assigned to more than one well unless the operator is granted an exception after a public hearing held after notice to all persons described in paragraph (2) of this subsection.

(1) An operator applying for an exception must show:

(A) an exception is necessary to prevent waste, prevent confiscation, or protect correlative rights;

(B) ownership under the tract is divided horizontally as defined in subsection (e) of this section; and

(C) the wells are not completed in the same ownership interval.

(2) With its application for an exception, the operator shall file the mailing addresses of all mineral interest owners within the Commission-designated field underlying the drilling unit and all mineral owners of any tracts adjacent to the drilling unit. In the event the applicant is unable after due diligence to locate the whereabouts of any person to whom notice is required by this subsection, the applicant shall publish notice of this application pursuant to §1.43 of this title (relating to Notice by Publication).

(3) To mitigate the potential for wellbore collisions, the applicant shall provide copies of any directional surveys to the persons entitled to notice under this subsection, upon request, within 15 days of the applicant's receipt of a request.

(h) [~~(f)~~] If an offset, overlying, or underlying operator, or a lessee or unleased mineral interest owner determines that any operator has assigned identical acreage to two or more concurrently producing wells in violation of this section, the operator or owner may file a complaint with the Hearings Division to request that a hearing be set to consider the issues raised in the complaint. If the Commission determines after a hearing on the complaint that acreage has been assigned in violation of this section, the Commission may curtail or cancel the allowable production rate for any affected wells and/or may cancel the Certificate of Compliance (Form P-4) for any affected wells for failure to comply with this section.

(i) [~~(g)~~] An operator shall file Form P-16, Acreage Designation, with each drilling permit application and with each completion report for horizontal wells in any field and for all wells in designated UFT fields as defined in §3.86 of this title. An operator assigning surface acreage to more than one well pursuant to subsection (g) of this section shall file Form P-16, Acreage Designation, with each drilling permit application and with each completion report. The operator may file Form P-16 with each drilling permit application and with each completion report for all other wells. The operator may also file proration unit plats for individual wells in a field.

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 October 22, 2019.

TRD-201903848
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 475-1295

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.71

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.71, regarding the Electricians program (the "proposed rule").

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 73 implement Texas Occupations Code, Chapter 1305, Electricians.

The proposed rule is necessary to implement House Bill (HB) 1342, 86th Legislature, Regular Session (2019). Section 2 of HB 1342 authorizes the Texas Commission of Licensing and Regulation ("Commission") and the Department's Executive Director to issue a restricted license to a person as an alternative to denying, revoking, suspending, or refusing to issue a license. Section 2 also authorizes the Department to impose reasonable conditions on a holder of a restricted license. Notably, a restricted license may only be issued to applicants within the Department's Air Conditioning and Refrigeration (Texas Occupations Code, Chapter 1302) and Electricians (Texas Occupations Code, Chapter 1305) programs.

The proposed rule requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. Additionally, the proposed rule requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. Lastly, the proposed rule requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work.

SECTION-BY-SECTION SUMMARY

The proposed rule contains three subsections. Proposed §73.71(a) requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. A holder of a restricted license who does not comply with the terms of a restricted license may be subject to an administrative penalty or other sanction as allowed by Texas Occupations Code, Chapter 51.

Proposed rule §73.71(b) requires a licensee to use reasonable care to ensure that a person under his or her supervision who

holds a restricted license complies with the conditions placed on that license. This subsection simply restates Texas Occupations Code §51.357(d) as enacted by HB 1342.

Proposed rule §73.71(c) requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work under that license. Potential conditions that could be imposed by the Commission or Executive Director pursuant to Texas Occupations Code §51.357(b) are that the license holder be subject to close supervision, or be allowed to work in only nonresidential settings. Because HB 1342 and proposed rule §73.71(b) require supervisors to use care to ensure that persons under their supervision with restricted licenses comply with the terms of licensure, it is reasonable that licensees be required to inform their employers of those conditions.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there may be a slight revenue gain, as there could be individuals who will obtain a restricted license who would not have obtained a license previously. However, the number of individuals who will obtain a restricted license cannot be estimated, and therefore, any revenue gain also cannot be estimated.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be a possible increase in the number of licensed electricians. The rule may allow persons with past criminal convictions to become employed as electricians.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there may be additional costs to persons who are required to comply with the proposed rule. Because existing licensees will be required by the proposed rule (and by HB 1342) to ensure that persons under their supervision comply with the terms of a restricted license, there may be negligible costs involved for the supervising licensees. Any cost the supervising licensee may incur cannot be estimated, however. Additionally, no licensee will be required to take on supervision of a restricted licensee, so this cost is optional.

Restricted licensees will be required to comply with the conditions imposed by the Commission or Executive Director, but these conditions should not impose a cost.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

5. The proposed rule does create a new regulation. Proposed rule §73.71 is a new rule. However, the rule is required by HB 1342.

6. The proposed rule does not expand, limit, or repeal an existing regulation.

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

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1305, which authorize the Texas Commission of Licensing and Regulation, 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. Texas Occupations Code §51.357, as enacted by HB 1342, also provides a basis for the proposed rule.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the proposed rule.

§73.71. Restricted Licenses.

(a) A person issued a restricted license in accordance with Texas Occupations Code, Chapter 51, Subchapter G, shall comply with any condition imposed by the commission or executive director.

(b) A licensee shall use reasonable care to ensure that the holder of a restricted license subject to the licensee's supervision complies with any condition imposed by the commission or executive director.

(c) Before performing any work, the holder of a restricted license must inform his or her employer of the conditions placed on the license.

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 October 28, 2019.

TRD-201903996
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 463-3671

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.75

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.75, regarding the Air Conditioning and Refrigeration program (the "proposed rule").

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 75 implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

The proposed rule is necessary to implement House Bill (HB) 1342, 86th Legislature, Regular Session (2019). Section 2 of HB 1342 authorizes the Texas Commission of Licensing and Regulation ("Commission") and the Department's Executive Director to issue a restricted license to a person as an alternative to denying, revoking, suspending, or refusing to issue a license. Section 2 also authorizes the Department to impose reasonable conditions on a holder of a restricted license. Notably, a restricted license may only be issued to applicants within the Department's Air Conditioning and Refrigeration (Texas Occupations Code, Chapter 1302) and Electricians (Texas Occupations Code, Chapter 1305) programs.

The proposed rule requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. Additionally, the proposed rule requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. Lastly, the proposed rule requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work.

SECTION-BY-SECTION SUMMARY

The proposed rule contains three subsections. Proposed rule §75.75(a) requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. A holder of a restricted license who does not comply with the terms of a restricted license may be subject to an administrative penalty or other sanction as allowed by Texas Occupations Code, Chapter 51.

Proposed rule §75.75(b) requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. This subsection simply restates Texas Occupations Code §51.357(d) as enacted by HB 1342.

Proposed rule §75.75(c) requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work under that license. Potential conditions that could be imposed by the Commission or Executive Director pursuant to Texas Occupations Code §51.357(b) are that the license holder be subject to close supervision, or be allowed to work in only nonresidential settings. Because HB 1342 and proposed rule §75.75(b) require supervisors to use care to ensure that persons under their supervision with restricted licenses comply with the terms of licensure, it is reasonable that licensees be required to inform their employers of those conditions.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there may be a slight revenue gain, as there could be individuals who will obtain a restricted license who would not have obtained a license previously. However, the number of individuals who will obtain a restricted license cannot be estimated, and, therefore, any revenue gain also cannot be estimated.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rule will not affect the local economy, so the agency is not required to prepare

a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be a possible increase in the number of licensed air conditioning and refrigeration contractors and technicians. The rule may allow persons with past criminal convictions to become employed as licensed air conditioning and refrigeration contractors or technicians.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there may be additional costs to persons who are required to comply with the proposed rule. Because existing licensees will be required by the proposed rule (and by HB 1342) to ensure that persons under their supervision comply with the terms of a restricted license, there may be negligible costs involved for the supervising licensees. Any cost the supervising licensee may incur cannot be estimated, however. Additionally, no licensee will be required to take on supervision of a restricted licensee, so this cost is optional.

Restricted licensees will be required to comply with the conditions imposed by the Commission or Executive Director, but these conditions should not impose a cost.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

5. The proposed rule does create a new regulation. Proposed rule §75.75 is a new rule. However, the rule is required by HB 1342.

6. The proposed rule does not expand, limit, or repeal an existing regulation.

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

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1302, which authorize the Texas Commission of Licensing and Regulation, 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. Texas Occupations Code §51.357, as enacted by HB 1342, also provides a basis for the proposed rule.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the proposed rule.

§75.75. Restricted Licenses.

(a) A person issued a restricted license in accordance with Texas Occupations Code, Chapter 51, Subchapter G, shall comply with any condition imposed by the commission or executive director.

(b) A licensee shall use reasonable care to ensure that the holder of a restricted license subject to the licensee's supervision complies with any condition imposed by the commission or executive director.

(c) Before performing any work, the holder of a restricted license must inform his or her employer of the conditions placed on the license.

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter D, §84.50; Subchapter M, §84.500 and §84.502; and Subchapter N, §84.600, regarding the Driver Education and Safety Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 84 implement Texas Education Code, Chapter 1001, relating to Driver Education and Safety (DES).

The proposed rules are necessary to implement House Bills (HB) 105 and 2048, 86th Legislature, Regular Session (2019). These rule changes have been combined into one proposal to ensure that the rules to implement HB 105 are adopted by March 1, 2020 as required in that bill. An additional bill passed in the 86th Session (R), HB 2847, also affects Chapter 1001, Texas Education Code and requires rulemaking. We anticipate that those rules will be proposed at some time in early 2020, as they relate to driver education schools and qualifications for driver education instructors.

HB 105 amends Chapter 1001, Education Code, by requiring that information relating to safely operating a vehicle near overweight or oversized vehicles be included in all driver education and driving safety courses.

HB 2048 repeals Chapter 708, Transportation Code, concerning the Driver Responsibility Program (DRP) in Chapter 708, Transportation Code. The bill also amends Chapter 1001, Education Code, by specifying the driving and safety offenses which would prevent someone from conducting a Parent Taught Driver Education Course. The qualifications for a Driver Education Instructor have been modified also, to mirror the changes to 1001.112, of the Code as amended by the bill.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §84.50 by adding a new subsection that sets forth the disqualifying traffic offenses that would prevent a person from conducting a parent-taught driver education course.

The proposed rules amend §84.500 by (1) adding the requirement to include information about safe motor vehicle operation around oversize and overweight vehicles in the curriculum of driver education and driving safety courses and (2) amending the driver education instructor qualifications to mirror what is in §84.50 of this Chapter relating to disqualifying traffic offenses.

The proposed rules amend §84.502 by adding the requirement to include information about safe motor vehicle operation around oversize and overweight vehicles in the curriculum of driver education and driving safety courses.

The proposed rules amend §84.600 by adding the requirement to include information about safe motor vehicle operation around oversize and overweight vehicles in the curriculum of driver education courses for public schools, educational service centers, and colleges and universities.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. The activities required to implement the proposed rules, if any, are one-time program administration tasks that are routine in nature, such as modifying or revising applications, publications, and/or website information, which will not result in an increase in program costs.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

The proposed rules are not anticipated to have any effect, through growth or loss, to local employers, the local economy, or the local labor force because the proposed rules do not make changes which would cause license holders to change the amount of people whom they hire for their businesses, nor would they change the number of people who hold licenses.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be increased safety for drivers in Texas due to additional training and education on safely operating a vehicle near oversize or overweight vehicles. Additionally, the proposed rules, clarify the eligibility requirements of those who can instruct a student in a parent-taught course and become licensed to teach a driver education instructor development course.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there may be additional costs to persons who are required to comply with the proposed rules resulting from implementation of HB 105, but there are no additional costs to such persons resulting from implementation of HB 2048. As a result of HB 105, all driver education school courses of instruction, driving safety courses of instruction, and the course programs for public schools, education service centers, and colleges and universities will have to be altered as to time and content to include information on safely operating a vehicle near oversized or overweight vehicles. Changing the content of their courses could result in a cost to some providers; however, at this time, the Department cannot specifically quantify these costs, which are expected to be minimal.

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

There may be an adverse effect on small businesses or micro-businesses as a result of the proposed rules, but there is no anticipated adverse economic effect on rural communities. Since the agency has determined that the proposed rules may have an adverse economic effect on small businesses or micro-businesses, the agency has prepared an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed and required under Texas Government Code §2006.002.

The Driver Education and Safety program regulates individuals and business entities, many of which are micro-businesses or small businesses. It is unknown how many of these individuals and business entities fall within these definitions because data regarding the number of employees and gross annual sales is not collected by the department from licensees. Some license holders may incur an economic effect from the implementation of the proposed rules; however, it is unknown whether these potential costs would rise to the level of an adverse economic effect on the licensees due to the variances in the business models and procedures employed by the licensees. More information may arise during the public comment period that would assist the department in assessing the net economic effect to licensees.

While the Department cannot determine with certainty whether the proposed rules will impose an adverse economic effect on small business or micro-businesses, the Department believes that some license holders may experience some economic effect. As a result of HB 105, all driver education school courses of instruction, driving safety courses of instruction, and the course programs for public schools, education service centers, and colleges and universities will have to be altered as to time and content to include information on safely operating a vehicle near oversized or overweight vehicles. Changing the content of their courses could result in a cost to some providers. However, this change is required by statute and cannot be avoided. The cost to providers to make this change depends on the provider and the amount of the adjustment.

The proposed rules have no anticipated adverse economic effect on rural communities because the rule will not decrease the availability of driver education or driving safety courses in rural communities, nor will the rules increase the cost of driver education or driving safety courses in rural communities.

ECONOMIC IMPACT STATEMENT

There are approximately 70 Driving Safety Course Providers, 42 Parent-Taught Course Providers, and over 850 Driver Education Schools, most of which are small or micro-businesses, that will have to comply with the rule requiring them to include information relating to methods of safely operating a motor vehicle near an oversize or overweight vehicle in the curriculum of each driver education course and driving safety course, as required by HB 105.

Driver education schools and driving safety course providers will now need to include this new information. This may cause some cost to course providers as they may have to shuffle established course content to include the new content in the curriculum. However, different providers will use different methods which best suit them to make the adjustments to their courses, so no estimate is available of what expenditures those adjustments might necessitate.

There is no alternative method to including the information relating to methods of safely operating a motor vehicle near an oversize or overweight vehicle in the various curricula, which is required by statute, without requiring a corresponding change to the course. The addition of this information is a one-time adjustment to a curriculum.

REGULATORY FLEXIBILITY ANALYSIS

There are no alternative methods of accomplishing the objective of the proposed rule, which requires information relating to methods of safely operating a motor vehicle near an oversize or overweight vehicle be included in the curriculum of each driver education course and driving safety course, so none were able to be considered.

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

The proposed rules may have a fiscal note that imposes a cost on regulated persons; however, the proposed rules fall under the exception for rules that are necessary to implement legislation under §2001.0045(c)(9). Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rules do expand an existing regulation. The proposed rules expand the regulation governing the content of the curriculum for driver education school courses of instruction, driving safety courses of instruction, and the course programs for public schools, education service centers, and colleges and universities to now include information on safely operating a vehicle near oversized or overweight vehicles. The addition to the rules is required by HB 105.

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

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Vanessa Vasquez, Legal Assistant, Texas Department of Licens-

ing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER D. PARENT TAUGHT DRIVER EDUCATION

16 TAC §84.50

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, 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 proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.50. Parent Taught Driver Education Program Requirements.

(a) (No change.)

(b) The person conducting the course must:

(1) Possess a valid license for the preceding three years that has not been suspended, revoked, or forfeited in the past three years for an offense that involves the operation of a motor vehicle;

(2) have not been convicted of:

(A) criminally negligent homicide; or

(B) driving while intoxicated in the past seven years; and

(3) have not been convicted during the preceding three years of:

(A) three or more moving violations described by Section 542.304, Transportation Code, including violations that resulted in an accident; or

(B) two or more moving violations described by Section 542.304, Transportation Code, that resulted in an accident.

(c) [~~(b)~~] After receiving the Parent Taught Driver Education Program Guide, the instructor must obtain one of the department approved parent taught driver education courses to fulfill program requirements.

(d) [~~(c)~~] The parent taught driver education course provider will provide the appropriate portion of a control-numbered DE-964 only to a person who has completed the objectives found in Module One: Traffic Laws or who has successfully completed the entire portion of the course for which the DE-964 is being issued.

(e) [~~(d)~~] The program includes both classroom and in-car instruction. Classroom instruction is limited to two hours per day and in-car instruction is limited to two hours per day.

(f) [~~(e)~~] The parent, or other individual authorized under §1001.112 of the Code, may teach both or utilize a licensed or public driver education school for either phase.

(g) [~~(f)~~] The fourteen (14) hours of in-car instruction must be taught under one program; either parent taught or a licensed or public driver education school. All previous driver education hours must be repeated if the method of instruction changes prior to completion of either phase.

(h) [~~(g)~~] The remaining hours of classroom following Module One: Traffic Laws, must be taught under one program, either parent taught or a licensed or public driver education school.

(i) [~~(h)~~] The additional thirty (30) hours of behind-the-wheel practice must be completed in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(j) [~~(i)~~] A student may apply to the Department of Public Safety for a learner license after completion of the objectives found in Module One: Traffic Laws.

(k) [~~(j)~~] Behind-the-wheel driver education instruction may be conducted in any vehicle that is legally operated with a Class C driver license on a Texas highway.

(l) [~~(k)~~] Behind-the-wheel driver education instruction may begin after the student receives a learner license. The required curriculum that must be followed includes: minimum of 44 hours that includes: 7 hours behind the wheel instruction in the presence of a parent or other individual authorized under §1001.112 of the Code; 7 hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and 30 hours of behind the wheel instruction, including at least 10 hours at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §84.500, §84.502

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, 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 proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.500. Courses of Instruction for Driver Education Schools.

(a) (No change.)

(b) This subsection contains requirements for driver education courses. All course content and instructional material shall include cur-

rent statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval.

(1) Minor and adult driver education course.

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

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational objectives established by the department in the Program of Organized Instruction in Driver Education and Traffic Safety (POI) and meet the requirements of this subchapter. In addition, the educational objectives that must be provided to every student enrolled in a minor and adult driver education course shall include information relating to litter prevention, anatomical gifts, safely operating a vehicle near oversized or overweight vehicles, leaving children in vehicles unattended, distractions, motorcycle awareness, alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle, and recreational water safety.

(D) - (U) (No change.)

(2) Driver education course exclusively for adults. Courses offered in a traditional classroom setting or online to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222(c) and §521.1601, must be offered in accordance with the following guidelines.

(A) Traditional approval process. The department may approve a driver education course exclusively for adults to be offered traditionally if the course meets the following requirements.

(i) - (ii) (No change.)

(iii) Minimum course content. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the following topics.

(I) - (VI) (No change.)

(VII) Cooperating with other roadway users--minimum of 20 minutes. Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users, including vulnerable roadway users in emergency and potential emergency situations and safely operating a vehicle near oversized or overweight vehicles.

(VIII) - (IX) (No change.)

(iv) (No change.)

(B) (No change.)

(c) This subsection contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the division may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) (No change.)

(2) Prior to enrolling a student in a driver education instructor development course, the school owner or representative must obtain proof that the student has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate a current official driving record from the student for the preceding 36-month period prior to enrollment. [~~The individual must not have accumulated 6 or more penalty points on a driving record during the preceding 36-month period.~~] The school must use the standards set forth in §84.50(b) of this Chapter when determining the qualifications for a student's enrollment [~~for assessing penalty points for convictions of traffic law violations and accident involvements established under Texas Transportation Code, Chapter 708, Subchapter B~~].

(3) - (5) (No change.)

(d) - (i) (No change)

§84.502. Driving Safety Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504, (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §84.2(16) of this chapter.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); the proper use of child passenger safety seat systems; safely operating a vehicle near oversized or overweight vehicles; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

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

(D) Minimum course content. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology. A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following.

(i) - (vii) (No change.)

(viii) Defensive driving strategies--minimum of 40 minutes (instructional objective--to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) - (VIII) (No change.)

(IX) safely operating a vehicle near oversized or overweight vehicles;

(X) [~~(IX)~~] motorcycle awareness, including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with motorcyclist; and

(XI) [~~(X)~~]distractions relating to the effect of using a wireless communication device, including texting or engaging in other actions that may distract a driver from the safe or effective operation of a motor vehicle.

(ix) - (xiii) (No change.)

(E) - (H) (No change.)

(2) (No change.)

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

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

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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, 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 proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.600. Program of Organized Instruction.

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

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the commissioner of education, as specified in this subsection, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversized or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for an instruction permit after completing six hours of instruction as specified in Module One if the student is taking the course in a concurrent program. The minor and adult driver education program instructional objectives shall include:

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

(3) Module Three: Vehicle Movements. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

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

(C) safely operating a vehicle near oversized or overweight vehicles;

(D) [~~(C)~~] managing vehicle balance: and

(E) [~~(D)~~] executing vehicle maneuvers.

(4) - (12) (No change.)

(d) - (j) (No change.)

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY

SUBCHAPTER A. ELECTRONIC REPORTING AND AMNESTY FOR STUDENTS REPORTING CERTAIN INCIDENTS

19 TAC §§3.11 - 3.15

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 3, Subchapter A, sections 3.11 through 3.15 of Board rules, concerning sexual misconduct policies and procedures at institutions of higher education.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local

governments as a result of creating the sections. There could be significant costs to public institutions of higher education to develop new policies, procedures, reporting mechanisms, and training for administrators, faculty, and staff.

Dr. Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improvements in policies and procedures at public institutions of higher education for addressing incidents of sexual misconduct. There could be significant costs to public institutions of higher education to develop new policies, procedures, reporting mechanisms, and training for administrators, faculty, and staff. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

Government Growth Impact Statement

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

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

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

(8) the rules will positively affect the state's economy.

Comments on the proposal may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Education Code, Sections 51.290 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of negotiated rulemaking and advisory committees.

The repeal affects the implementation of Texas Education Code, Chapter 51.

§3.11. Purpose.

§3.12. Authority.

§3.13. Definitions.

§3.14. Electronic Reporting for Certain Incidents.

§3.15. Amnesty for Students Reporting Certain Incidents.

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 October 28, 2019.

TRD-201904004

William Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 427-6206

19 TAC §§3.11 - 3.15

The Texas Higher Education Coordinating Board proposes new rules for Chapter 3, Subchapter A, Sections 3.11 through 3.15 concerning sexual misconduct policies and procedures at institutions of higher education. The proposed new rules mandate that all institutions of higher education adopt policies on sexual harassment, sexual assault, dating violence, and stalking. The rules provide guidance for institutions on reporting requirements, disciplinary processes, and confidentiality. The proposed new rules were reviewed and approved by consensus by the Negotiated Rulemaking Committee on Sexual Harassment/Assault on October 17, 2019. The new rules will affect students when the recommendations are adopted by the Board.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of creating the sections. There could be significant costs to public institutions of higher education to develop new policies, procedures, reporting mechanisms, and training for administrators, faculty, and staff.

Dr. Silverman as also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be improvements in policies and procedures at public institutions of higher education for addressing incidents of sexual misconduct. There could be significant costs to public institutions of higher education to develop new policies, procedures, reporting mechanisms, and training for administrators, faculty, and staff. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

Comments on the proposal may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

Government Growth Impact Statement

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

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

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

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

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule; and

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

(8) the rules will positively affect the state's economy.

The new sections are proposed under the Texas Education Code, Sections 51.290 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of negotiated rulemaking and advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 51.

§3.11 Student Withdrawal or Graduation Pending Disciplinary Charges; Request for Information from Another Postsecondary Educational Institution.

(a) If a student withdraws or graduates from a postsecondary educational institution pending a disciplinary charge alleging that the student violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking, the institution:

(1) may not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility; and

(2) shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

(b) On request by another postsecondary educational institution, a postsecondary educational institution shall, as permitted by state or federal law, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, provide to the requesting institution information relating to a determination by the institution that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

§3.12 Trauma-Informed Investigation Training.

A postsecondary educational institution shall ensure each of its employed peace officers completes training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

§3.13. Memoranda of Understanding Required.

To facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the institution, a postsecondary educational institution shall enter into one or more memoranda of understanding with an entity from one or more of the following categories:

(1) local law enforcement agencies;

(2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and

(3) hospitals or other medical resource providers.

§3.14. Responsible and Confidential Employee.

(a) Each postsecondary educational institution shall:

(1) designate:

(A) one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.); and

(B) one or more employees as persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking; and

(2) inform each student enrolled at the institution of the responsible and confidential employees designated under Paragraph (1) of this subsection.

(b) A confidential employee designated under Subsection (a)(1)(B) of this section may not disclose any communication made by a student to the employee unless the student consents to the disclosure or the employee is required to make the disclosure under Section 3.5(c), state law, or federal law.

§3.15. Student Advocate.

(a) A postsecondary educational institution may designate one or more students enrolled at the institution as student advocates to whom other students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. The institution shall notify each student enrolled at the institution of the student advocate(s) designated under this subsection.

(b) A student advocate designated under Subsection (a) of this section may not disclose any communication made by a student to the advocate unless the student consents to the disclosure or the advocate is required to make the disclosure under state or federal law.

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

Filed with the Office of the Secretary of State on October 28, 2019.

TRD-201904005
William Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 427-6206

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

19 TAC §102.1003

The Texas Education Agency (TEA) proposes an amendment to §102.1003, concerning the high-quality prekindergarten grant program. The proposed amendment would modify the rule to reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019. The proposed amendment would update the rule to implement full-day high-quality prekindergarten for eligible four-year-old students and remove reference to the grant program.

BACKGROUND INFORMATION AND JUSTIFICATION: Effective April 6, 2016, the commissioner adopted 19 TAC §102.1003 as authorized by the TEC, §§29.1532, 29.165-29.169, and 29.172, 84th Texas Legislature, 2015. The law required the commissioner to adopt rules for implementing a High-Quality Prekindergarten Grant program. The rule provides appropriate definitions and explains the required quality components. The components include curriculum aligned to the Texas Prekindergarten Guidelines, increased prekindergarten teacher training and/or qualifications, implementation of student progress monitoring, program evaluation, and development of a family engagement plan.

HB 3, 86th Texas Legislature, 2019, removed the High-Quality Prekindergarten Grant program from statute and requires that school districts and charters schools provide full-day prekindergarten to eligible four-year-old students consistent with the requirements of a High-Quality Prekindergarten program as established by TEC, Chapter 29, Subchapter E-1.

The proposed amendment to 19 TAC §102.1003 would implement statute and update and clarify existing provisions, as follows.

Subsection (a) would be deleted to remove reference to the High-Quality Prekindergarten Grant Program.

Subsection (b) would be redesignated as subsection (a) and updated to remove all references to the grant program and grant funding so that all school districts and charter schools providing a prekindergarten program must provide high-quality educational services established under TEC, Chapter 29, Subchapter E-1, to qualifying students. Paragraph (7) would be added to include the eligibility of the child of a person eligible for the Star of Texas Award. House Bill 357, 85th Texas Legislature, 2017, amended the prekindergarten eligibility criteria. New paragraph (7) would align the rule with current statute.

Subsection (c) would be redesignated as subsection (b) and updated to remove references to the grant program and grant funding.

Subsection (d) would be redesignated as subsection (c) and updated to remove reference to grant funding. Paragraph (1) would be revised to add the frequency and timing to student progress monitoring and specify that social and emotional development may be referred to as health and wellness in a progress monitoring tool. Paragraph (2) would be revised to add the administration timeframe for the kindergarten assessment and specify that it must address reading and at least three developmental skills, including literacy. The revisions to frequency and timing were amended to align with best practices for administering child progress monitoring tools.

Subsection (e) would be redesignated as subsection (d) and updated to remove reference to grant funding. Paragraph (4) would be revised to provide additional teacher qualification guidance regarding degrees. Paragraph (6) would be revised to provide a window for professional development to occur as well as suggested topics relating to a high-quality program. The revisions made to the teacher qualifications are to ensure the professional development occurs during the school year and is aligned with national standards.

Subsection (f) would be redesignated as subsection (e) and updated to remove reference to grant funding and provide a deadline for school districts and charter schools to make their family engagement plan available on the district or charter website. Proposed new paragraph (2)(D)(i) would be added to require school districts and charter schools to provide families with updates at least three times a year regarding their child's development. Subsequent clauses in paragraph (2)(D) would be relettered. The revisions made to the family engagement plan are to ensure the plan is complete at the beginning of the year and it is a best practice to share a child's progress with families.

Subsection (g) would be redesignated as subsection (f) and updated to remove reference to grant funding. Applicable cross references would be updated throughout. Paragraph (2) would be revised to add frequency to the reporting of prekindergarten assessment information. Paragraph (3) would be revised to add the requirement that the kindergarten readiness instrument must be multidimensional and approved by the commissioner as well as a deadline for submitting results. Proposed new paragraphs (4)-(6) would add the reporting of the additional teacher qualifications, the family engagement URL/website link, and the prekindergarten program evaluation type. These reporting requirements have been in place since the 2016-2017 school year and the proposed changes will align the rule with the reporting requirements.

Subsection (h) would be redesignated as subsection (g) and updated to remove reference to grant funding.

Subsection (j) would be deleted to remove reference to grant funding.

Subsection (k) would redesignated as subsection (i) and updated to remove reference to grant funding.

The section title would also be revised to remove reference to the grant program. Technical edits to the reference of the Texas Prekindergarten Guidelines would be made throughout the rule.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect there would be no fiscal impact to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal. Districts have been implementing the high-quality components since the 2018-2019 biennium and the proposal will align the rule with the amended statute.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation by removing grant and funding language from the high-quality prekindergarten grant rule. The proposal would expand an existing regulation to conform with changes to statute by extending the high-qualify prekindergarten components to all eligible four-year-old students. The proposed rulemaking would also expand an existing regulation by providing additional detail on student progress monitoring, family engagement, additional teacher qualifications, and program evaluation.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new reg-

ulation; would not limit an existing regulation; would not increase or decrease the number of individuals subject to the rule's applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarifying terminology and requirements relating to a high-quality prekindergarten program for school districts and open-enrollment charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data or reporting impact. School districts and open-enrollment charters would continue to report the data elements relating to a high-quality prekindergarten program defined as defined in statute. All of the data collection points referenced are already being collected through the Early Childhood Data System (ECDS). The proposal would align the rule with current practice and does not require any additional information to be reported.

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

PUBLIC COMMENTS: The public comment period on the proposal begins November 8, 2019, and ends December 9, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 8, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §29.165, repealed by House Bill (HB) 3, §4.001, 86th Texas Legislature, 2019, which required the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program; TEC, §29.166, repealed by HB 3, §4.001, 86th Texas Legislature, 2019, which addressed the student qualifications and general school district and charter eligibility for funding under this grant program; TEC, §29.167, as amended by HB 3, 86th Texas Legislature, 2019, which requires school districts and charter schools to select and implement a curriculum for a high-quality prekindergarten program that includes the prekindergarten guidelines established by the TEA, measures the progress of students in meeting the recommended learning outcomes, and does not use national curriculum standards developed by the Common Core State Standards Initiative. This section also outlines requirements that each teacher of a prekindergarten program class must meet, including employment as a prekindergarten teacher in a school district that has received approval from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom, and allows for equivalent qualifications; TEC, §29.168, which requires a school district or charter school to develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. The local family engagement plan must be based on the family engagement strategies established by the TEA in collaboration with other state agencies; TEC, §29.169, which requires a school district to select and implement appropriate methods for evaluating the district's program classes by measuring student progress and make data from the results of program evaluations available to parents; and TEC, §29.172, as amended by HB 3, 86th Texas Legislature, 2019, which permits the commissioner of education to adopt rules necessary to implement TEC, Chapter 29, Subchapter E-1. HB 3, §2.019, 86th Texas Legislature, 2019, which requires that school districts and charters schools provide full-day prekindergarten to eligible four-year-old students consistent with the requirements of a High-Quality Prekindergarten program as established by TEC, Chapter 29, Subchapter E-1.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.165 and §29.166, repealed by HB 3, 86th Texas Legislature; §29.167, as amended by HB 3, 86th Texas Legislature, 2019; §29.168; §29.169; and §29.172, as amended by HB 3, 86th Texas Legislature, 2019.

§102.1003. High-Quality Prekindergarten [~~Grant~~] Program.

~~[(a) From funds appropriated for this purpose, all eligible school districts and open-enrollment charter schools may receive grant funding for each qualifying student in average daily attendance in a high-quality prekindergarten program in the district or charter school.]~~

~~[(1) The amount of funding per qualifying student will be determined based on the total amount of appropriated funding, the number of eligible grant applicants, and the number of qualifying students served by each eligible grant applicant. Funding under this program for each qualifying student in attendance for the entire instructional period on a school day shall not exceed $1,500.]~~

~~[(2) Each applicant seeking funding through the high-quality prekindergarten grant program authorized by the Texas Education Code (TEC), §29.165, must submit an application in a format prescribed by the Texas Education Agency (TEA) through a request for application (RFA).]~~

~~[(3) Each applicant must meet all the requirements established under the TEC, Chapter 29, Subchapter E-1.]~~

(a) [~~(b)~~] School districts and open-enrollment charter schools providing a prekindergarten [~~An eligible applicant receiving funds under this~~] program must provide high-quality educational services established under the Texas Education Code (TEC), Chapter 29, Subchapter E-1, to qualifying students. A student is qualified to participate in a high-quality prekindergarten [~~qualifies for additional funding under this grant~~] program if the student is four years of age on September 1 of the year the student begins the program and:

(1) is unable to speak and comprehend the English language;

(2) is educationally disadvantaged;

(3) is a homeless child, as defined by 42 United States Code §11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child;

(4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;

(5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; [~~or~~]

(6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by the Texas Family Code, §262.201 ; or [~~.~~]

(7) is the child of a person eligible for the Star of Texas Award as:

(A) a peace officer under Texas Government Code, §3106.002;

(B) a firefighter under Texas Government Code, §3106.003; or

(C) an emergency medical first responder under Texas Government Code, §3106.004.

(b) [~~(c)~~] A [~~To be eligible to receive grant funding under this program, a~~] school district or an open-enrollment charter school shall implement a curriculum for a high-quality prekindergarten [~~grant~~] program that addresses [~~all of~~] the 2015 Texas Prekindergarten Guidelines [~~(updated 2015)~~] in the following domains:

(1) social and emotional development;

(2) language and communication;

(3) emergent literacy reading;

(4) emergent literacy writing;

(5) mathematics;

(6) science;

(7) social studies;

(8) fine arts;

(9) physical development and health; and

(10) technology.

(c) [~~(d)~~] A [~~To be eligible to receive grant funding under this program, a~~] school district or an open-enrollment charter school shall measure:

(1) at the beginning and end of the school year, the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the 2015 Texas Prekindergarten Guidelines [~~(updated 2015)~~] using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures:

(A) social and emotional development , which may be referred to as "health and wellness" in a progress monitoring tool;

(B) language and communication;

(C) emergent literacy reading;

(D) emergent literacy writing; and

(E) mathematics; and

(2) the preparation of each student for kindergarten using a commissioner-approved multidimensional kindergarten [~~readiness~~] instrument during the first 60 days of school for reading and at least three developmental skills, including literacy, as described in TEC, §28.006.

(d) [~~(e)~~] Each lead [~~To be eligible to receive grant funding under this program, each~~] teacher of a high-quality prekindergarten [~~grant~~] program must be certified under the TEC, Chapter 21, Subchapter B, and have one of the following additional qualifications:

(1) a Child Development Associate (CDA) credential;

(2) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;

(3) at least eight years' experience of teaching in a nationally accredited child care program;

(4) a graduate or undergraduate degree in early childhood education or early childhood special education or a non-early childhood education degree with a documented minimum of 15 units of coursework in early childhood education;

(5) documented completion of the Texas School Ready Training Program (TSR Comprehensive); or

(6) be employed as a prekindergarten teacher in a school district that has ensured that:

(A) prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing [~~all ten domains in~~] the 2015 Texas Prekindergarten Guidelines [~~that were approved prior to 2015~~] in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;

(B) teachers who have not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class shall complete:

(i) the first 30 hours of 150 cumulative hours of documented professional development before the beginning of the next school year. The professional development shall address topics relevant to high-quality prekindergarten and may include: [~~addressing all ten domains in the Texas Prekindergarten Guidelines (updated 2015) in addition to other relevant topics related to high-quality prekindergarten before the end of the 2016-2017 school year; and~~]

(I) the 2015 Texas Prekindergarten Guidelines;

(II) the use of student progress monitoring results to inform classroom instruction;

(III) improving the prekindergarten classroom environment to enhance student outcomes;

(IV) improving the effectiveness of teacher interaction with students as determined by an evaluation tool; and

(ii) [~~complete~~] the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and

(C) at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education , mentors, or instructional coaches.

(e) [~~(f)~~] A [~~To be eligible to receive grant funding under this program, a~~] school district or an open-enrollment charter school shall develop, implement, and make available on the district, charter, or campus website by November 1 of each school year, a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.

(1) The following terms, when used in this section, shall have the following meanings.

(A) Family--Adults responsible for the child's care and children in the child's life who support the early learning and development of the child.

(B) Family engagement--The mutual responsibility of families, schools, and communities to build relationships to support student learning and achievement and to support family well-being and the continuous learning and development of children, families, and educators. Family engagement is fully integrated in the child's educational experience and supports the whole child and is both culturally responsive and linguistically appropriate.

(2) The family engagement plan shall:

(A) facilitate family-to-family support using strategies such as:

(i) creating a safe and respectful environment where families can learn from each other as individuals and in groups;

(ii) inviting former program participants, including families and community volunteers, to share their education and career experiences with current families; and

(iii) ensuring opportunities for continuous participation in events designed for families by families such as training on family leadership;

(B) establish a network of community resources using strategies such as:

(i) building strategic partnerships;

(ii) leveraging community resources;

(iii) monitoring and evaluating policies and practices to stimulate innovation and create learning pathways;

(iv) establishing and maintaining partnerships with businesses, faith-based organizations, and community agencies;

(v) identifying support from various agencies, including mental and physical health providers;

(vi) partnering with local community-based organizations to create a family-friendly transition plan for students arriving from early childhood settings;

(vii) providing and facilitating referrals to family support or educational groups based on family interests and needs;

(viii) communicating short- and long-term program goals to all stakeholders; and

(ix) identifying partners to provide translators and culturally relevant resources reflective of the home language;

(C) increase family participation in decision making using strategies such as:

(i) developing and supporting a family advisory council;

(ii) developing, adopting, and implementing identified goals within the annual campus/school improvement plan targeting family engagement;

(iii) developing and supporting leadership skills for family members and providing opportunities for families to advocate for their children/families;

(iv) collaborating with families to develop strategies to solve problems and serve as problem solvers;

(v) engaging families in shaping program activities and cultivating the expectation that information must flow in both directions to reflect two-way communication;

(vi) developing, in collaboration with families, clearly defined goals, outcomes, timelines, and strategies for assessing progress;

(vii) providing each family with an opportunity to review and provide input on program practices, policies, communications, and events in order to ensure the program is responsive to the needs of families; and

(viii) using appropriate tools such as surveys or focus groups to gather family feedback on the family engagement plan;

(D) equip families with tools to enhance and extend learning using strategies such as:

(i) providing families with updates at least three times a year that specify student progress in health and wellness, language and communication, emergent literacy reading, emergent literacy writing, and mathematics;

(ii) [~~(i)~~] designing or implementing existing home educational resources to support learning at home while strengthening the family/school partnership;

(iii) [~~(ii)~~] providing families with information and/or training on creating a home learning environment connected to formal learning opportunities;

(iv) [~~(iii)~~] equipping families with resources and skills to support their children through the transition to school and offering opportunities for families and children to visit the school in advance of the prekindergarten school year;

(v) [~~(iv)~~] providing complementary home learning activities for families to engage in at home with children through information presented in newsletters, online technology, social media, parent/family-teacher conferences, or other school- or center-related events;

(vi) [~~(v)~~] providing families with information, best practices, and training related to age-appropriate developmental expectations;

(vii) [~~(vi)~~] emphasizing benefits of positive family practices such as attachment and nurturing that complement the stages of children's development;

(viii) [~~(vii)~~] collaborating with families to appropriately respond to children's behavior in a non-punitive, positive, and supportive way;

(ix) [~~(viii)~~] encouraging families to reflect on family experiences and practices in helping children; and

(x) [~~(ix)~~] assisting families to implement best practices that will help achieve the goals and objectives identified to meet the needs of the child and family;

(E) develop staff skills in evidence-based practices that support families in meeting their children's learning benchmarks using strategies such as:

(i) providing essential professional development for educators in understanding communication and engagement with families, including training on communicating with families in crisis;

(ii) promoting and developing family engagement as a core strategy to improve teaching and learning among all educators and staff; and

(iii) developing staff skills to support and use culturally diverse, culturally relevant, and culturally responsive family engagement strategies; and

(F) evaluate family engagement efforts and use evaluations for continuous improvement using strategies such as:

(i) conducting goal-oriented home visits to identify strengths, interests, and needs;

(ii) developing data collection systems to monitor family engagement and focusing on engagement of families from specific populations to narrow the achievement gap;

(iii) using data to ensure alignment between family engagement activities and district/school teaching and learning goals and to promote continuous family engagement;

(iv) ensuring an evaluation plan is an initial component that guides action;

(v) using a cyclical process to ensure evaluation results are used for continuous improvement and adjustment; and

(vi) ensuring teachers play a role in the family engagement evaluation process.

(f) [~~(g)~~] In a format prescribed by the Texas Education Agency (TEA) [~~TEA~~], a school district or an open-enrollment charter school [~~that receives funding under this grant~~] shall:

(1) report the curriculum used in the high-quality prekindergarten program classes as required by subsection (b) [~~(c)~~] of this section;

(2) report a description and the beginning- and end-of-year results of each commissioner-approved prekindergarten instrument used in the high-quality prekindergarten program classes as required by subsection (c) [~~(d)~~] of this section; [~~and~~]

(3) report:

(A) a description of each commissioner-approved multidimensional kindergarten readiness instrument used in the district or charter school to measure the effectiveness of the district's or charter school's high-quality prekindergarten program classes as required by subsection (c) [~~(d)~~] of this section; and

(B) the results for at least 95% of the district's or charter school's kindergarten students on the commissioner-approved multidimensional kindergarten readiness instrument by the end of the TEA-determined assessment collection window; [~~.~~]

(4) report additional teacher qualifications described in subsection (d) of this section;

(5) report the family engagement plan URL/website link described in subsection (e) of this section; and

(6) report the prekindergarten program evaluation type.

(g) [~~(h)~~] A school district or an open-enrollment charter school [~~that receives funding under this grant~~] shall:

(1) select and implement appropriate methods for evaluating the district's or charter school's high-quality prekindergarten program by measuring student progress; and

(2) make data from the results of program evaluations available to parents.

(h) [~~(i)~~] A school district or an open-enrollment charter school [~~that receives funding under this grant~~] must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students.

[~~(j) A school district or an open-enrollment charter school that receives funding under this grant may only use the funding to improve the quality of the district's or charter school's high-quality prekindergarten program. Program funds must be used in accordance with the requirements stated in the RFA.~~]

(i) [~~(k)~~] A school district or an open-enrollment charter school [~~that receives funding under this grant~~] shall maintain locally and provide at the TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation.

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 October 28, 2019.

TRD-201903993
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.13

The Texas Medical Board (Board) proposes amendments to 22 TAC §163.13, concerning Expedited Licensure.

Section 163.13, relating to Expedited Licensure, is amended to implement a legislative mandate in H.B. 1504 (86th Regular Legislative Session) requiring the Board to develop an expedited licensing process for certain applicants who also hold an out-of-state license in good standing.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to allow for qualified and experienced physicians who have practiced successfully in other states to obtain expedited licensure in Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the amendments as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be as stated above.

Mr. Freshour has determined that for the first five-year period these rules are in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments, and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rules;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rules;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rules.

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

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

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

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

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

(5) The proposed rules create new regulations as described above.

(6) The proposed rules do not repeal existing regulations. The proposed rules expand an existing regulation.

(7) The proposed rules increases the number of individuals subject to the rules' applicability.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, 155.0561, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

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

§163.13. Expedited Licensure.

(a) Applications for licensure shall be expedited by the board's licensure division provided the applicant meets the criteria for applying for licensure under §163.2(d) of this title (relating to Full Texas Medical License) or submits an affidavit stating that:

(1) the applicant intends to practice in a rural community as determined by the Office of Rural Health Initiatives; or

(2) the applicant intends to practice medicine in a medically underserved area or health professional shortage area designated by the United States Department of Health and Human Services that has a shortage of physicians.

(b) Applications for licensure by certain psychiatrists shall be expedited by the board's licensure division.

(1) To be eligible, the applicant must meet the following criteria:

(A) holds an unrestricted license to practice medicine issued by another state;

(B) is board certified in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry; and

(C) is not ineligible for licensure under §155.003(e) of the Medical Practice Act.

(2) The board's licensure division shall review all applications upon receipt to determine whether an applicant is eligible for expedited licensure.

(3) Subsection (b) of this section is effective September 1, 2017, and expires on January 1, 2022.

(c) Applications for licensure by certain physicians licensed in other states or Canada for a certain period of years shall be expedited by the board's licensure division. The Board has interpreted the intent of Tex. Occ. Code, Section 155.0561, to recognize that a physician can demonstrate competency by engaging in the active practice of medicine over a period of years in the United States or Canada. By allowing these physicians to seek expedited licensure it increases access to medical care for the citizens of Texas.

(d) An applicant meets the criteria set out in Tex. Occ. Code, Section 155.0561, shall be deemed to have met the requirements of Tex. Occ. Code, Section 155.003.

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

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 165. MEDICAL RECORDS

22 TAC §165.7

The Texas Medical Board (Board) proposes a new rule to 22 TAC 165, relating to Out-of-Network Provider Notice and Disclosure Requirements, §165.7.

The new rule §165.7 implements a legislative mandate in S.B. 1264 (86th Regular Legislative Session) requiring the Board to develop a notice and disclosure form related to cost estimate for out-of-network providers performing elective medical procedures. The provider must furnish the notice and disclosure form to the patient prior to undergoing such elective procedures.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing this proposal will be to have rules that comply with statutory mandates.

Mr. Freshour has determined that, for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with this rule as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule, and has determined that for each year of the first five years the proposed rule will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that, for each year of the first five years this rule amendment, as proposed, is in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(3) there are no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

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

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

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

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

(5) The proposed rule does create a new regulation.

(6) The proposed rule does expand, limit, or repeal an existing regulation as described above.

(7) The proposed rule does increase the number of individuals subject to the rule's applicability.

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

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

The new rule is proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§165.7. Out-of-Network Provider Notice and Disclosure Requirements.

(a) As used in this section:

(1) "Board" means the Texas Medical Board and its advisory boards and committees.

(2) "Out-of-network provider" means a facility-based, laboratory service, or diagnostic imaging provider that is not a participating provider for a health benefit plan offered by a health maintenance organization operating under Texas Insurance Code, Chapter 843; a preferred provider benefit plan, including an exclusive provider benefit plan, offered by an insurer under Texas Insurance Code, Chapter 1301; or a health benefit plan, other than a health maintenance organization plan (HMO), under Texas Insurance Code, Chapter 1551, 1575, or 1579.

(3) "Provider" means a physician, health care practitioner, or other health care provider who is licensed, permitted, or certified by the board.

(4) "Health care practitioner" means an individual who is licensed to provide health care services.

(5) "Emergency care" has the meaning assigned by Texas Insurance Code, Section 1301.155.

(6) "Diagnostic imaging provider" has the meaning assigned by Texas Insurance Code, Section 1467.001.

(7) "Diagnostic imaging service" has the meaning assigned by Texas Insurance Code, Section 1467.001.

(8) "Enrollee" has the meaning assigned by Texas Insurance Code, Section 1467.001

(9) "Facility" has the meaning assigned by Texas Health and Safety Code, Section 324.001.

(10) "Facility-based provider" means a physician, health care practitioner, or other health care provider who provides medical care or health care services to patients of a health care facility and who is licensed, permitted, or certified by the Board.

(11) "Laboratory service provider" has the meaning assigned by Texas Insurance Code, Section 1467.001.

(12) "Laboratory service" means a non-emergency interpretation of or diagnosis based on:

(A) a specimen; or

(B) information provided by a laboratory based on a specimen.

(b) This section implements Sections 1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111 of the Texas Insurance Code.

(c) In accordance with Texas Insurance Code requirements, an out-of-network provider shall provide written notice and disclosure to an enrollee prior to providing nonemergency health care or medical services to the enrollee. The required notice and disclosure must be in writing and provided to the enrollee by the out-of-network provider or agent or assignee of the out-of-network provider, in a form that substantially complies with the board approved notice and disclosure statement and Texas Insurance Code requirements.

(d) The enrollee must be provided the notice and disclosure statement prior to the scheduling of the nonemergency health care or medical service and no less than ten business days prior to the date the nonemergency health care or medical service is performed. The enrollee must be given at least five business days to consider whether to accept the notice and disclosure statement and may not agree prior to three business days after the notice and disclosure statement was provided. The notice and disclosure statement must be signed and dated by the enrollee no less than five business days prior to the date the service is performed. A provider shall not charge any nonrefundable fee, deposit, or cancellation fee for the procedure prior to the receipt of the signed notice and disclosure statement.

(e) A single comprehensive required notice and disclosure statement, signed and dated by the enrollee, may be used in the event that multiple out-of-network providers will provide the nonemergency health care or medical services. If a single notice and disclosure statement is used each out-of-network provider or their agent or assignee must provide the required information concerning their health care or medical service on the notice and disclosure statement.

(f) Each out-of-network provider shall maintain a copy of the required notice and disclosure statement, signed and dated by the enrollee, in the enrollee's medical record. An out-of-network facility-based provider complies with this requirement if a copy of the required notice and disclosure statement, signed and dated by the enrollee, is placed in the enrollee's medical record maintained by the facility.

(g) The notice and disclosure Statement must:

(1) explain that the out-of-network provider does not have a contract with the enrollee's health benefit plan;

(2) disclose projected amounts for which the enrollee may be responsible; and

(3) disclose the circumstances under which the enrollee would be responsible for those amounts.

(h) The notice and disclosure statement must include:

(1) an option for the enrollee to accept financial responsibility as presented in the notice and disclosure statement;

(2) an option for the enrollee to decline the nonemergency health care or medical services from the out-of-network provider at the projected amounts presented in the notice and disclosure statement; and

(3) a notice that the enrollee may request to negotiate the projected amounts presented in the notice and disclosure statement, and that the out-of-network provider is neither required by law nor prevented by law from negotiating the projected price amounts.

(i) An out-of-network provider shall review the notice and disclosure statement with the enrollee on the day the nonemergency health care or medical services are to be rendered. The enrollee shall affirm in writing or verbally and such affirmation shall be documented and made part of the enrollee's medical records.

(j) Figures 1 and 2 are the board approved notice and disclosure statement to be utilized under this rule.
Figure 1: 22 TAC §165.7(j)
Figure 2: 22 TAC §165.7(j)

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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Scott Freshour
General Counsel
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For further information, please call: (512) 305-7016

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §§193.5, 193.13, 193.17, 193.21

The Texas Medical Board (Board) proposes amendments to 22 TAC §193.5, concerning Physician Liability for Delegated Acts and Enforcement, §193.13, concerning Certified Registered Nurse Anesthetists, and §193.17, concerning Nonsurgical Medical Cosmetic Procedures. The Board also proposes new §193.21, concerning Delegation Related to Radiological Services.

The amendments to §193.5 relating to Physician Liability for Delegated Acts and Enforcement, adds new subsections (c) and (d) in order to clarify that the physician and the delegate relationship applies for providers other than PA and APRN's.

The amendments to §193.13 relating to Delegation to Certified Registered Nurse Anesthetists, adds clarifying language and new subsections (d), (e) and (f) relating to the roles and responsibilities of the delegating physician and CRNAs. The rule clarifies that a CRNA does have not independent practice authority, but significant discretion in performing delegated duties. This clarifying language is a direct result of a recent Attorney General Opinion directly on point.

The amendments to §193.17 relating to Nonsurgical Medical Cosmetic Procedures, adds clarifying language addressing the responsibilities of delegating physician and providers while providing non-surgical cosmetic procedures in medspas. New subsection (f) is proposed to ensure that delegating and supervising physicians of medspas are required to report such delegation relationships to the Board. These rule amendments arose out of increasing concerns over relating to non-surgical cosmetic procedures being provided at medspas without physician involvement and without proper delegation and supervision.

The proposed new rule §193.21, relating Delegation Related to Radiological Services, adds requirements to ensure proper oversight by delegating physicians involving radiological studies and treatment plans.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to provide enhanced safety and accountability of practitioners through clear guidance as to requirements of delegation and supervision. The proposed new rule provides clearer guidance to practitioners' responsibilities related to their delegated duties, and the role and expectations of the delegating physician. Additionally, the rules provide greater transparency for patients to fully understand who is actually providing treatment and services, and who is supervising these activities.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years these rule amendments and new rule, as proposed, are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

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

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

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

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

(5) The proposed amended rules do create a new regulations as described above, the proposed new rule does create a new regulation as described above.

(6) The proposed rules expand, limit, or repeal an existing regulation as described above.

(7) The proposed rule increases the number of individuals subject to the rule's applicability.

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

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

The amendments and new rule are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

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

§193.5. Physician Liability for Delegated Acts and Enforcement.

(a) A physician shall not be liable for the act or acts of a physician assistant or advanced practice registered nurse solely on the basis of having signed an order, a standing medical order, a standing delegation order, a prescriptive authority agreement, or other order or protocol, authorizing a physician assistant or advanced practice registered nurse to administer, provide, prescribe or order a drug or device, unless the physician has reason to believe the physician assistant or advanced practice registered nurse lacked the competency to perform the act or acts.

(b) Notwithstanding subsection (a) of this section, delegating physicians remain responsible to the Board and to their patients for acts performed under the physician's delegated authority.

(c) This subsection applies to individuals other than a physician assistant or advanced practice registered nurse who have a standing medical order, a standing delegation order, a prescriptive authority agreement, or other order or protocol with the delegating physician. A physician who delegates to individuals is responsible for ensuring and documenting:

(1) it is within reasonable, sound medical judgment after consideration of the patient's history, status, and procedures to be undertaken to proceed with delegation;

(2) the delegated acts can be properly and safely performed in its customary manner;

(3) the identity of the physician responsible for the delegation and supervision of the delegated act or acts; and

(4) the identity credentials and title of the individual who will perform the delegated act or acts.

~~[(c) Any physician authorizing standing delegation orders or standing medical orders which authorize the exercise of independent medical judgment or treatment shall be subject to having his or her license to practice medicine in the State of Texas revoked or suspended under §§164.001, 164.052, and 164.053 of the Act.]~~

(d) Any physician authorizing delegation, orders, standing delegation orders or standing medical orders which authorize or allow the exercise of independent medical judgment or treatment shall be subject to having his or her license to practice medicine in the State of Texas revoked or suspended under §§164.001, 164.052, and 164.053 of the Act.

§193.13. Delegation to Certified Registered Nurse Anesthetists.

(a) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist, acting under adequate physician supervision, the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(b) A physician who delegates to a certified registered nurse anesthetist, acting under adequate physician supervision, the ordering of drugs and devices necessary for the certified registered anesthetist to administer an anesthetic or an anesthesia-related service is not required to register the name and license number of the certified registered nurse anesthetist with the board.

(c) This section shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists. A certified registered nurse anesthetist does not possess independent authority to administer anesthesia without delegation by a physician.

(d) The delegating physician is responsible:

(1) for determining and insuring that it is reasonable, sound medical judgment to delegate to certified registered nurse anesthetist

(2) that the delegated acts can be properly and safely delegated performed in its customary manner; and

(3) is not in violation of any other statute;

(e) The delegating physician is ultimately responsible for the certified registered nurse anesthetist performing delegated acts.

(f) If the delegating physician and certified registered nurse anesthetist enter or have a prescriptive authority agreement the terms and conditions of that agreement will control the provision of the delegated anesthesia or anesthesia-related services.

§193.17. Nonsurgical Medical Cosmetic Procedures.

(a) Purpose. The purpose of this section is to establish the duties and responsibilities of a physician who performs or who delegates the performance of a nonsurgical medical cosmetic procedure [~~(hereafter referred to as "Procedure")~~]. These procedures can result in complications and the performance of these procedures is the practice of medicine. This rule shall not be interpreted to allow individuals to perform delegated procedures without physician supervision. [~~either a physician or APRN or PA being onsite, or a physician being available for emergency consultation or appointment in the event of an adverse outcome.~~]

(b) Definitions.

(1) Advanced Practice Registered Nurse (APRN)--is defined in accordance with the Texas Occupation Code, Section 301.152(a). [~~Midlevel practitioner- A physician assistant or advanced practice registered nurse.~~]

(2) Administer the direct application of a drug or other substances to the body of a patient by injection, inhalation, ingestion or any other non-surgical means. [~~Prescription medical device--A device that the federal Food and Drug Administration has designated as a prescription medical device, and can be sold only to persons with prescriptive authority in the state in which they reside.~~]

(3) Physician Assistant (PA)--an individual licensed to practice as a physician assistant in Texas in accordance with the Texas Occupation Code, Chapter 204.

[~~(3) Procedure--A nonsurgical medical cosmetic procedure, including but not limited to the injection of medication or substances for cosmetic purposes, the administration of colonic irrigations, and the use of a prescription medical device for cosmetic purposes.~~]

(4) Prescription medical device--A device that the federal Food and Drug Administration has designated as a prescription medical device, and can be sold only to persons with prescriptive authority in the state in which they reside.

(5) Procedure--A nonsurgical medical cosmetic procedure, including but not limited to the [~~injection~~] administering of [~~medication~~] a drug or substances for cosmetic purposes, the administration of colonic irrigations, and the use of a prescription medical device for cosmetic purposes.

(6) Qualified Personnel--A qualified and properly trained individual, other than a APRN or PA, who acts under a physician's delegation to perform a procedure which is not in violation of any other statute.

(7) Supervision--The on-site presence of an APRN or PA, acting under the delegation from a physician, during the performance of a procedure, or the immediate availability of the delegating physician for consultation. Supervision does not require direct observation of the performance of the procedure.

(c) Applicability. This section does not apply to:

(1) surgery as defined under Texas Occupations Code, §151.002(a)(14);

(2) the practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(3) the use of nonprescription devices;

(4) intravenous therapy;

(5) procedures performed at a physician's practice by the physician APRN, or PA [~~or midlevel practitioners~~] acting under the physician's supervision; or

(6) laser hair removal procedures performed in accordance with Texas Health and Safety Code, Chapter 401, Subchapter M.

(d) Physician Responsibilities.

(1) A physician must be appropriately trained, including hands-on training, in a procedure [~~Procedure~~] prior to performing the procedure [~~Procedure~~] or delegating the performance of a procedure [~~Procedure~~]. The physician must keep a record of the [~~his or her~~] training in the office and have it available for review upon request by a patient or a representative of the board.

(2) Prior to authorizing a procedure [~~Procedure~~], a physician, or APRN or PA [~~or midlevel practitioner~~] acting under the delegation of a physician, must:

(A) take a history;

(B) perform an appropriate physical examination;

(C) make an appropriate diagnosis;

(D) recommend appropriate treatment;

(E) develop a detailed and written treatment plan;

(F) obtain the patient's informed consent;

(G) provide instructions for emergency and follow-up care;

(H) prepare and maintain an appropriate medical record;

(I) practice under [~~have~~] signed and dated written protocols as described in paragraph (7) of this subsection that are detailed to a level of specificity that the [~~person~~] APRN, PA, or qualified personnel performing the procedure [~~Procedure~~] may readily follow; and

(J) practice under [~~have~~] signed and dated written standing orders.

(K) The performance of the items listed in subparagraphs (A) - (J) of this paragraph must be documented in the patient's medical record.

(3) After a patient has been evaluated and diagnosed, as described in paragraph (2) of this subsection, qualified personnel [~~unlicensed~~] may perform a procedure under supervision. [~~only if:~~]

[~~(A) a physician or APRN or PA is onsite during the procedure; or~~]

[~~(B) a delegating physician is available for emergency consultation in the event of an adverse outcome, and if the physician considers it necessary, be able to conduct an emergency appointment with the patient.~~]

(4) Regardless of who performs the procedure [~~Procedure~~], the physician is ultimately responsible for the safety of the patient and all aspects of the procedure [~~Procedure~~].

(5) Regardless of who performs the procedure [~~Procedure~~] the physician is responsible for ensuring that each procedure [~~Procedure~~] is documented in the patient's medical record. A procedure performed by qualified personnel [~~unlicensed personnel~~] must be timely co-signed by a supervising physician within a reasonable time as determined by the physician.

(6) The physician must ensure that the facility at which procedures [~~Procedures~~] are performed, there is a quality assurance program pertaining to procedures [~~Procedures~~] that includes the following:

(A) a mechanism to identify complications and adverse effects of treatment and to determine their cause;

(B) a mechanism to review the adherence to written protocols by all health care personnel;

(C) a mechanism to monitor the quality of treatments;

(D) a mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols; and

(E) ongoing training to maintain and improve the quality of treatment and performance of procedures [~~Procedures~~] by qualified[~~health care~~] personnel.

(7) A physician may delegate procedures [~~Procedures~~] only at a facility at which the physician has either:

(A) approved in writing the facility's written protocols pertaining to the procedures [~~Procedures~~]; or

(B) developed [~~his own~~] protocols for the procedures[~~Procedures~~] as described in paragraph (2)(I) of this subsection.

(8) The physician must ensure that an APRN, PA or qualified personnel [~~a person~~] performing a procedure [~~Procedure~~] has appropriate training in, at a minimum:

(A) techniques for each procedure [~~Procedure~~];

(B) cosmetic or cutaneous medicine;

(C) indications and contraindications for each procedure [~~Procedure~~];

(D) pre-procedural and post-procedural care;

(E) recognition and acute management of potential complications that may result from the procedure [~~Procedure~~]; and

(F) infectious disease control involved with each treatment.

(9) The physician [~~has~~] must have a written office protocol for the APRN, PA or qualified personnel [~~person~~] performing the procedure to follow in performing each procedure delegated. A written office protocol must include, at a minimum, the following:

(A) the identity of the physician responsible for the delegation and supervision of the procedure;

(B) selection criteria to screen patients by the physician, APRN, or PA for the appropriateness of treatment;

(C) a description of appropriate care and follow-up for common complications, serious injury, or emergencies;

(D) a statement of the activities, decision criteria, and plan the APRN, or PA [~~physician~~] or qualified personnel shall follow when performing [~~or delegating the performance of~~] a procedure, including the method for documenting decisions made and a plan for communication or feedback to the delegating [~~authorizing~~] physician concerning specific decisions made; and

(E) a description of what information must be documented by the APRN, PA or qualified personnel [~~person~~] performing the procedure.

(10) The physician must ensure [~~ensures~~] that each APRN, PA or qualified personnel [~~person~~] performs each procedure [~~Procedure~~] in accordance with the written office protocol.

(11) Each patient must sign [~~signs~~] a consent form prior to treatment that lists potential side effects and complications, and the identity and titles of the individual who will perform the procedure.

(12) Each APRN, PA or qualified personnel [~~person~~] performing a procedure [~~Procedure~~] must be readily identified by a name tag or similar means that clearly delineates the identity and credentials of the person.

(13) Any time a procedure [~~Procedure~~] is performed, at least one APRN, PA or qualified personnel [~~person~~] trained in basic life support must be onsite.

(e) Notice Provisions.

(1) Each facility providing procedures [~~Nonsurgical Medical Cosmetic Procedures~~] must post a Notice Concerning Complaints in compliance with Chapter 178.

(2) Each facility providing procedures [~~Nonsurgical Medical Cosmetic Procedures~~] must post in each public area and treatment room or area a Notice in the format found in §178.3 of this title (relating to Complaint Resolution) [~~Rule 178.3~~] including the name(s) and Texas Medical license numbers of the delegating physician(s) for that facility.

(f) Notification of Intent to Delegate and Supervise. A physician licensed under the Act must, before accepting a position for purposes of delegating and supervising any procedure or upon changing or adding such a position, must submit notification of intent to delegate and supervise such procedures. Notification under this section must include:

(1) the business owner's name, business name and address, and telephone number of the facility or business where the procedures will be conducted;

(2) a list of the PA(s), APRN(s), or qualified personnel subject to delegation and supervision; and

(3) the name, business address, Texas medical license number, and telephone number of the supervising physician.

(g) A physician must submit notification of termination, any changes in, or additions to the facility or business where the procedures will be conducted, and the persons subject to delegation and supervision not later than the 30th day after the date the change or addition is made.

(h) For the purposes of this section, a single form prescribed by the board shall be used to provide notification required under this subsection.

(i) If a supervising physician will be unavailable to supervise as required by this section, arrangements shall be made for an alternate physician to provide that supervision. The alternate physician providing that supervision shall affirm in writing and document through a log where the procedures are being performed that he or she is familiar with the prescriptive authority agreements, protocols, or standing delegation orders in use, as applicable, and is accountable for adequately supervising the procedures. The log shall be kept at the facility or business. The log shall contain dates of the alternate physician supervision and be signed by the alternate physician acknowledging this responsibility.

(j) Disciplinary Action. All physicians delegating or supervising such procedures to an APRN, PA, or qualified personnel at a practice or facility shall be responsible for ensuring compliance with all applicable laws and rules pertaining to supervision, delegation and procedures. A violation of any applicable law or provision of this rule is grounds for disciplinary action.

§193.21. Delegation Related to Radiological Services.

(a) This section does not apply to PAs and APRNs who have been specifically delegated authority to perform and interpret radiologic studies.

(b) A physician may delegate the performance of radiological procedures and diagnostic reading to specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel.

(c) The specially trained individuals may:

(1) do preliminary reading and interpretation of the radiological studies; and

(2) render a preliminary diagnosis and course of treatment based on the radiological studies.

(d) The delegating physician's approval or changes to subsection (c)(1) and (2) of this section must documented in the medical record, within a reasonable time, following the action taken by the specially trained individual.

(e) The delegating physician is ultimately responsible for any and all actions taken by a specially trained individual under subsection (c)(1) and (2) of this section.

(f) This section does not allow a physician to delegate any medical act, including but not limited to performance of a radiologic procedure, preliminary reading and interpretation of a radiologic study, and rendering a preliminary diagnosis and course of treatment based on a radiologic study, to an individual not properly trained, qualified, and licensed to perform the medical act.

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

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Scott Freshour
General Counsel
Texas Medical Board
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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER A. LICENSING

22 TAC §203.8

The Texas Funeral Service Commission (Commission) proposes to amend Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter A, Licensing, specifically §203.8, Continuing Education.

BACKGROUND AND JUSTIFICATION. The Commission announced its intent to review its rules in accordance with Texas Government Code, §2001.039 in January and published notice in the *Texas Register* on April 19, 2019, (44 TexReg 2064). The agency held five meetings with stakeholders during its review period. The Commission has determined the reasons for initially adopting the rules in Title 22, Part 10, Chapter 203, Subchapter A continue to exist. However, changes to the following rules are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules.

§203.8, Continuing Education.

The changes would (1) allow the Commission to accept continuing education courses approved by the Academy of Professional Funeral Service Providers in lieu of agency review and approval as the Academy has more expertise in course approval; (2) provide the certificate of attendance must include whether the course was online or in person; (3) require all active licensees to take 16 hours of continuing education regardless of where they practice; (4) exempt persons in retired or disabled status from continuing education; (5) remove language stating it is the licensee's responsibility to track continuing education hours; (6) update mandatory continuing education on law to include content on Health & Safety Code Chapter 716, (7) remove content

related to Health & Safety Code Chapter 715 from mandatory Vital Statistics continuing education; (8) require four of the 16 required continuing education hours to be taken in person; (9) remove the use of college courses as continuing education; (10) clarify instructors of continuing education could get two hours of continuing education per course; (11) provide licensees who supervise provisional licensees could earn 8 hours of continuing education, up from 4; (12) remove language allowing licensees not practicing in the state to complete only the mandatory continuing education; (13) remove language requiring retired, active/disabled, active licensees to take 10 hours of continuing education; (14) eliminate the ability to carry-over continuing education hours from one renewal period to another; (15) remove authority to pay non-compliance fee instead of taking continuing education; and (16) renumber language regarding continuing education requirements for military licensees without making any substantive changes.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Janice McCoy, Executive Director, has determined for the first five-year period the amendments are in effect there will be no fiscal implication for local governments, or local economies and no state fiscal impact.

PUBLIC BENEFIT/COST NOTE. Ms. McCoy has determined that, for each year of the first five years the proposed amendments will be in effect, the public benefit is that the agency's rules are in compliance with Texas Occupations Code Chapter 651. There will not be any economic cost to any individuals required to comply with the proposed amendments and there is no anticipated negative impact on local employment because the rules only further define and clarify statute.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. Ms. McCoy has determined that there will be no adverse economic effect on small or micro-businesses or rural communities because there are no costs on individuals due to the amendments. As a result, the preparation of an economic impact statement and regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

GOVERNMENT GROWTH IMPACT STATEMENT. Ms. McCoy also has determined that, for the first five years the amendments would be in effect: 1. The proposed amendments do not create or eliminate a government program; 2. The proposed amendments will not require a change in the number of employees of the agency; 3. The proposed amendments will not require additional future legislative appropriations; 4. The proposed amendments will not require an increase in fees paid to the agency; 5. The proposed amendments will not create a new regulation; 6. The proposed amendments will not expand, limit, or repeal an existing regulation; 7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and 8. The proposed amendments will neither positively nor negatively affect this state's economy.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed amendments do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government and no new fee is imposed. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

TAKINGS IMPACT ASSESSMENT: Ms. McCoy has determined Chapter 2007 of the Texas Government Code does not apply to this proposal because it affects no private real property interests. Accordingly, the Agency is not required to complete a takings impact assessment regarding this proposal.

ENVIRONMENTAL RULE ANALYSIS: Ms. McCoy has determined this proposal is not brought with the specific intent to protect the environment to reduce risks to human health from environmental exposure and asserts this proposal is not a major environmental Rule as defined by Government Code §2001.0225. As a result, an environmental impact analysis is not required.

PUBLIC COMMENT: Comments on the proposal may be submitted in writing to Mr. Kyle Smith at 333 Guadalupe Suite 2-110, Austin, Texas 78701, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days after the date of publication of this proposal in the Texas Register.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Occupations Code §651.165 which authorizes the Commission to renew licenses; Texas Occupations Code §§651.255-651.256 which outlines exams required to be licensed as a funeral director or embalmer; Texas Occupations Code §651.259 which authorizes the Commission to reciprocate licenses from other states; Texas Occupations Code §651.265 which authorizes the Commission to renew licenses in active/inactive status; §651.266 which authorizes the Commission to adopt rules related to continuing education; Texas Occupations Code §651.3045 which authorizes the Commission to offer education waivers to certain applicants; and Texas Occupations Code Chapter 55 which outlines requirements for occupational licensing of military members, veterans and spouses.

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

§203.8. Continuing Education.

(a) Each person holding an active license and practicing as a funeral director or embalmer in this state is required to participate in continuing education as a condition of license renewal.

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

(1) Approved provider--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the Commission.

(2) Approved program--A continuing education program activity that has been approved by the Commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.

(3) Hour of continuing education--A 50 minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Approval of continuing education providers.

(1) A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the Commission and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.

(2) National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.

(3) An application for approval must be accompanied by a syllabus for each course to be offered which specifies the course objectives, course content and teaching methods to be used, and the number of credit hours each course is requesting to be granted, and a resume and description of the instructor's qualifications.

(4) A provider is not approved until the Commission accepts the application and issues a Provider Number for the provider and a course number for each course offered under that Provider Number. The Commission may refuse to approve a provider's application for any valid reason, as determined by the Commission.

(5) A Provider Number and course number are valid for one year, expiring on December 31st of each year, regardless of when the number was granted.

(6) The Commission may approve courses that have been approved by the Academy of Professional Funeral Service Practice, Inc. (APFSP). A provider submitting such a course would [~~not~~] need to submit the materials required under subsection (c)(3) of this section [~~unless requested by the Commission~~].

(d) Responsibilities of approved providers.

(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:

(A) the name of the provider and approval number;

(B) the name of the participant;

(C) the title of the course or program, including the course or program number;

(D) the number of credit hours given;

(E) the date and place the course was held;

(F) the signature of the provider or provider's representative;

(G) the signature of the attendee, and

(H) if the course was in-person or on-line.

(2) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed at the time the program concludes.

(3) The provider shall maintain the attendance records and evaluations for a minimum of two years after the course is presented. A copy of the evaluations and/or attendance roster shall be submitted to the Commission upon request.

(4) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.

(5) The Commission may monitor any continuing education course with or without prior notice.

(e) Credit hours required.

(1) Licensed funeral directors and embalmers who actively practice [~~in this state~~] are required to obtain 16 hours of continuing education every two-year renewal period. A licensee may receive credit for a course only once during a renewal period.

(2) Persons in Retired or Disabled status are exempt from continuing education.

(3) Persons in an active military status are eligible for exemption from the continuing education requirements, upon request. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall meet the continuing education requirements before the next renewal period after the release and return.

(f) The following are mandatory continuing education hours and subjects for each renewal period:

(1) Ethics--two credit hours--this course must at least cover principals of right and wrong, the philosophy of morals, and standards of professional behavior.

(2) Law Updates--two credit hours--this course must at least cover the most current versions of Occupations Code Chapter 651, Health and Safety Code Chapter 716, and the Rules of the Commission.

(3) Vital Statistics Requirements and Regulations--two credit hours--this course must at least cover Health and Safety Code Chapters 193, 711, and Texas Administrative Code, Title 25, Chapter 181.

(g) Of the 16 hours of continuing education, four hours must be taken in-person. The remaining 12 hours may be taken through Internet/online presentation with a maximum of two hours per course.

(h) The Commission will grant the following credit hours toward the continuing education requirements for license renewal. The credit hours outlined in this section are eligible to be counted toward the four hours of required in-person continuing education.

(1) A person is eligible for a maximum of eight credit hours per renewal period for provisional licensee supervision, regardless of the number of provisional licensees supervised.

(2) A presenter or instructor of approved continuing education is eligible for a maximum of two credit hours per renewal period per course for instruction, regardless of the number of times the course is presented.

(3) A person is eligible for a maximum of four credit hours per renewal period for attendance at Commission meetings, provided the licensee signs in and is present during the entirety of the meeting.

(i) Exemptions.

(1) An individual whose renewal date is 12 months or less following initial licensure is not required to obtain continuing education hours prior to renewal of the license. An individual whose renewal date is more than 12 months following first licensure is required to complete the mandatory continuing education outlined in subsection (f) of this section.

(2) The Executive Director may authorize full or partial hardship exemptions from the requirements of this section based on personal or family circumstances and may require documentation of such circumstances.

(A) The hardship request must be submitted in writing at least 30 days prior to the expiration of the license.

(B) Hardship exemptions will not be granted for consecutive licensing periods.

(j) The Commission will not renew the license of an individual who fails to obtain the required 16 hours of continuing education.

(k) Any licensee receiving or submitting for credit continuing education hours in a fraudulent manner shall be required to obtain all continuing education on site and not online for two consecutive renewal periods and shall be subject to any applicable disciplinary action.

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

Filed with the Office of the Secretary of State on October 23, 2019.

TRD-201903888
Kyle E. Smith
Intrerim Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 936-2469

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22 TAC §203.16

The Texas Funeral Service Commission (Commission) proposes amendments to Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter A - Licensing, §203.16 - Consequences of Criminal Conviction.

BACKGROUND AND JUSTIFICATION. In 2019, the 86th Texas Legislature enacted HB 1342 and SB 1217 which enacted changes to Chapters 51 and 53, Texas Occupations Code. The legislation updated the statute as it relates to how licensing agencies issue or deny licenses to people with a past criminal conviction or deferred adjudication. This proposal updates the Commission's rule to ensure compliance with the legislative changes.

SECTION BY SECTION SUMMARY

Subsection (a) is amended to comply with HB 1342 by removing the authorization for the Commission to consider an offense not directly related to the occupations of funeral directing and/or embalming that was committed less than five years before the person applies for the license.

New subsection (b) is added to comply with SB 1217 by prohibiting the Commission from considering arrests that did not result in a conviction or deferred adjudication.

Existing subsection (b) is re-lettered as subsection (c).

Subsection (c) is re-lettered as subsection (d) and is amended to comply with HB 1342, which requires written notice of the basis for the intended denial, suspension, or revocation.

Subsection (d) is re-lettered as subsection (e).

Subsection (e) is re-lettered as subsection (f). This subsection is amended to clarify that the Commission must consider each of the enumerated factors outlined in Chapter 53 of the Texas Occupations Code in its assessment of an application and determine if those factors directly relate to the duties and responsibilities of the licensed occupation. An additional factor is added in compliance with HB 1342 which requires the Commission to consider any correlation between the elements of a crime and the duties and responsibilities of the licensed occupation. The amendment also corrects a minor grammatical error.

Subsection (f) is re-lettered as subsection (g). This subsection is amended to clarify that the Commission must determine if a crime directly relates to the licensed profession before taking action on a license or application for a license. It complies with HB 1342 by striking the language requiring the Commission to (1) assess the fitness of a person; and (2) consider letters of recommendation from prosecutors and law enforcement and correctional officers.

Subsection (g) is repealed which allowed the Commission to ask an applicant to furnish proof of the applicant's employment history, support of dependents, good conduct, and payment of required court costs and required fees, fines, and restitution.

Subsection (h) is amended to add that the enumerated crimes directly relate to the licensed occupation, in compliance with the changes enacted by HB 1342.

Subsection (k) is added to require the Commission, prior to taking action against a licensee or applicant, provide written notice that includes a statement that (1) a final decision on the license will be based on the factors outlined in subsections (f) or (g) and (2) the person has the responsibility to provide evidence regarding those factors in compliance with changes enacted by HB 1342. The notice must allow the person no less than 30 days to provide the evidence.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Janice McCoy, Executive Director, has determined for the first five-year period the amendments are in effect there will be no fiscal implication for local governments, or local economies and no state fiscal impact.

Because there is no effect on local economies for the first five years the proposed amendments are in effect, no local employment impact statement is required by Texas Government Code §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. McCoy has determined that, for each year of the first five years the proposed amendments will be in effect, the public benefit is that the agency's rules will comply with HB 1342 and SB 1217, which relate to how the Commission must review the criminal backgrounds of applicants and licensees. There will not be any new economic cost to any individuals required to comply with the proposed amendments and there is no anticipated negative impact on local employment because the rules only further define and clarify statute.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. Ms. McCoy has determined that there will be no adverse economic effect on small or micro-businesses or rural communities because there are no new costs on individuals due to the amendments. As a result, the preparation of an economic impact statement and regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

GOVERNMENT GROWTH IMPACT STATEMENT. Ms. McCoy also has determined that, for the first five years the amendments would be in effect: 1. The proposed amendments do not create or eliminate a government program; 2. The proposed amendments will not require a change in the number of employees of the agency; 3. The proposed amendments will not require additional future legislative appropriations; 4. The proposed amend-

ments will not require an increase in fees paid to the agency; 5. The proposed amendments will not create a new regulation; 6. The proposed amendments do limit existing regulations related to how the agency reviews criminal history to the benefit of individuals; 7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and 8. The proposed amendments will neither positively nor negatively affect this state's economy.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed amendments do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government and no new fee is imposed. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

TAKINGS IMPACT ASSESSMENT: Ms. McCoy has determined that no private real property interests are affected by the proposal and the proposal does not restrict, limit, or impose a burden on an owner's right to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.0043.

ENVIRONMENTAL RULE ANALYSIS: Ms. McCoy has determined this proposal is not brought with the specific intent to protect the environment to reduce risks to human health from environmental exposure and asserts this proposal is not a major environmental Rule as defined by Government Code §2001.0225. As a result, an environmental impact analysis is not required.

PUBLIC COMMENT: Comments on the proposal may be submitted in writing to Mr. Kyle Smith at 333 Guadalupe Suite 2-110, Austin, Texas 78701, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days after the date of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY: This proposal is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, (2) Texas Occupations Code Chapter 53 which outlines how a licensing agency may review criminal backgrounds of applicants and licensees in accordance with changes made when the 86th Texas Legislature enacted HB 1342 and SB 1217; and (3) the authority of the Commission to issue licenses pursuant to Texas Occupations Code §§651.251-253.

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

§203.16. Consequences of Criminal Conviction.

(a) The Commission may suspend or revoke a license or deny a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an occupation required to be licensed by Occupations Code, Chapter 651 (Chapter 651). [~~The Commission may consider an offense not listed as directly related to the occupations of funeral directing and/or embalming that was committed less than five years before the person applies for the license.~~]

(b) The Commission may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision.

(c) [~~(b)~~] The Commissioners may place an applicant or licensee who has been convicted of an offense on probation by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

(d) [~~(c)~~] If the Commissioners suspend or revoke a license or deny a person from getting a license, the Commission must notify the person of the decision in writing. That notice must explain any factor(s) considered under Subsection (f) or Subsection (g) of this section that served as the basis for the action and notify the licensee or applicant he or she has the right to appeal that decision to SOAH.

(e) [~~(d)~~] The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. A person in prison is ineligible for licensure. Revocation or denial of licensure under this subsection is not subject to appeal at SOAH.

(f) [~~(e)~~] The Commission shall consider each of the following factors in determining what crimes [~~whether a criminal conviction~~] directly relate [~~relates~~] to the duties and responsibilities of an occupation required to be licensed under [~~by~~] Chapter 651, and therefore are included in Subsection (h) of this section:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupations of funeral directing and/or embalming;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as [~~that in which~~] the person previously had been involved; [~~and~~]

(4) the relationship of the crime to the ability or[~~;~~] capacity[~~; or fitness~~] required to perform the duties and discharge the responsibilities of the licensed occupation; and

(5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(g) [~~(f)~~] If the person has been convicted of a crime enumerated under Subsection (h) of this section or a crime that otherwise directly relates to the duties and responsibilities of the occupations required to be licensed under Chapter 651, [~~a person has been convicted of a crime,~~] the Commission shall consider the following in determining whether to take action authorized by Texas Occupations Code Section 53.021 [~~against a person's fitness to perform the duties and discharge the responsibilities of a Chapter 651 occupation~~]:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; [and]

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's fitness including letters of recommendation. [from:

[(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]

[(B) the sheriff or chief of police in the community where the person resides; and]

[(C) any other person in contact with the convicted person.]

[(g) The applicant may be asked to furnish proof that the applicant has:

[(1) maintained a record of steady employment;

[(2) supported the applicant's dependents;

[(3) maintained a record of good conduct; and

[(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.]

(h) The following crimes are directly related to the occupations of funeral directing or embalming, or a crime that otherwise directly relates to the duties and responsibilities of the occupation required to be licensed under Chapter 651, the Commission shall consider the following determining whether to take action authorized by Texas Occupations Code Section 534. 021:

(1) Class B misdemeanors classified by Occupations Code §651.602:

(A) acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under Chapter 651 and the Rules of the Commission;

(B) making a first call in a manner that violates Occupations Code §651.401;

(C) engaging in a funeral practice that violates Chapter 651 or the Rules of the Commission; or

(D) violating Finance Code, Chapter 154, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation;

(2) the commission of acts within the definition of Abuse of Corpse under Penal Code, §42.08, because those acts indicate a lack of respect for the dead;

(3) an offense listed in Article 42A.054, Code of Criminal Procedure as provided by Occupations Code §53.021(3);

(4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure as provided by Occupations Code §53.021(4);

(5) the following crimes because these acts indicate a lack of respect for human life and dignity:

(A) Murder;

(B) Assault;

(C) Sexual Assault;

(D) Kidnapping;

(E) Injury to a Child;

(F) Injury to an Elderly Person;

(G) Child Abuse;

(H) Harassment; or

(I) Arson;

(6) the following crimes because these acts indicate a lack of principles needed to practice funeral directing and/or embalming:

(A) Robbery;

(B) Theft;

(C) Burglary;

(D) Forgery;

(E) Perjury;

(F) Bribery;

(G) Tampering with a governmental record; or

(H) Insurance claim fraud; and

(7) the following crimes because these acts indicate a lack of fitness to practice funeral directing and/or embalming:

(A) delivery, possession, manufacture or use of or the illegal dispensing of a controlled substance, dangerous drug, or narcotic; or

(B) multiple (more than two) convictions for driving while intoxicated or driving under the influence.

(i) Multiple violations of any criminal statute shall be reviewed by the Commission because multiple violations may reflect a pattern of behavior that renders the applicant unfit to hold a funeral director's and/or embalmer's license.

(j) The Commission may not consider a person to be convicted of an offense if the judge deferred further proceedings without entering an adjudication of guilt, placed the person on community supervision, and dismissed the proceedings at the end of the community supervision. However, if the Commission determines that the licensure of the person as a funeral director and/or embalmer would create a situation in which the person has the opportunity to repeat the prohibited conduct, the Commission shall consider a person to have been convicted regardless of whether the proceedings were dismissed after a period of deferred adjudication if:

(1) the person was charged with any offense described by Article 62.001(5) Code of Criminal Procedure;

(2) the person has not completed the term of community supervision or the person completed the period of supervision less than five years before the date of application; or

(3) a conviction of the offense would make the person ineligible for the license by operation of law.

(k) Prior to taking action against a person as authorized by Texas Occupations Code §53.021, the Commission shall provide written notice to the person that includes a statement that the final decision of the Commission will be based on factors listed under Subsection (f) or Subsection (g) of this section, and the person has the responsibility to provide evidence regarding those factors. The notice shall allow the person no less than 30 days from receiving the notice to submit any relevant evidence or information.

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 October 23, 2019.

TRD-201903887
Kyle E. Smith
Interim Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 936-2469

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Texas Department of Insurance proposes amendments to 28 TAC §1.414, concerning the 2020 assessment of maintenance taxes and fees imposed by the Insurance Code. The proposed amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2020 on the basis of gross premium receipts for calendar year 2019. The proposed amendments also delete 28 TAC §1.414(c)(3) regarding maintenance tax rates on nonprofit legal services corporations, because of the repeal of the tax by Senate Bill 1623, 86th Legislature, Regular Session (2019).

EXPLANATION. Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; and workers' compensation certified self-insurers.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The department also proposes amendments in subsections (a) - (f) and (h) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsections (a)(1) - (9), (b), (c)(1) - (2), (d), and (e) to update rates to reflect the methodology the department developed for 2020. The department also proposes to delete subsection (c)(3), because of the repeal of the tax by Senate Bill 1623, 86th Legislature, Regular Session (2019).

The following paragraphs provide an explanation of the methodology used to determine proposed rates of assessment for maintenance taxes and fees for 2020:

In general, the department's 2020 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2019.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1353 (House Bill 1), Acts of the 86th Legislature, Regular Session, (2019) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the Commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2020 fiscal year until the next assessment collection period in 2021. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation (DWC) and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department added these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department included costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department included an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculated the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removed costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduced the total cost need by subtracting the estimated ending fund balance for fiscal year 2019 (August 31, 2019) and estimated fee revenue collections for fiscal year 2020. The resulting balance is the estimated revenue need that must be supported during the 2020 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance assessments.

The department determined the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplied the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusted the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusted the resulting revenue need as described below.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocated the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocated the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines a proportionate share of the total costs for maintenance taxes or fees. The department used the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divided the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for DWC and the Office of Injured Employee Counsel (OIEC):

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2020 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2020 fiscal year until the next assessment collection period in 2021. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2019, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2020. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs provide an explanation of the methodology the department used to develop the proposed rates for the Workers' Compensation Research and Evaluation Group.

To determine the revenue need, the department considered the following factors that are applicable to the Workers' Compensation Research and Evaluation Group: (i) the appropriations in the General Appropriations Act for fiscal year 2020 from Account No. 0036 and from the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2020 fiscal year until the next assessment collection period in 2021. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2019. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in Texas as applicable to the individual lines of business written. The rates proposed in this rule will be applied to captive insurance companies based on the individual lines of business written, unless the Commissioner postpones or waives the tax for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to Texas under Insurance Code §964.071(c).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Robert Palm, program specialist in Financial Services, has determined that for each year of the first five years the proposal will be in effect, the expected fiscal impact on state government is an estimated income of $145,633,583 to the state's general revenue fund.

There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, because local governments are not involved in enforcing or complying with the proposed amendments, and there will be no effect on local employment or local economy.

PUBLIC BENEFIT AND COST NOTE. Mr. Palm also determined that for each year of the first five years the amended section is in effect, the public benefit expected as a result of enforcing the section will be the collection of maintenance tax and fee assessments that accurately reflect the department's needs and correctly allocate the cost among the entities regulated by the department.

The cost in 2020 to an insurer that received premiums in 2019 will be: for motor vehicle insurance, .044 of 1 percent of those gross premiums; for casualty insurance and fidelity, guaranty, and surety bonds, .053 of 1 percent of those gross premiums; for fire insurance and allied lines, including inland marine, .274 of 1 percent of those gross premiums; for workers' compensation insurance, .067 of 1 percent of those gross premiums; and for title insurance, .068 of 1 percent of those gross premiums.

An insurer that receives premiums for workers' compensation insurance in 2019 will also pay 2 percent of that premium for the operation of DWC and OIEC and .034 of 1 percent of that premium to fund the Workers' Compensation Research and Evalu-

ation Group's activities. A workers' compensation self-insurance group will pay 2 percent of its 2019 gross premium for the group's retention under Labor Code §407A.301 and 2 percent of 1 percent of its 2019 gross premium for the group's retention under Labor Code §407A.302.

The cost in 2020 for an insurer that received premiums in 2019 for life, health, and accident insurance, will be .040 of 1 percent of those gross premiums. In 2020, an HMO will pay $.28 per enrollee if it is a single service HMO or a limited service HMO, and $.84 per enrollee if it is a multiservice HMO. In 2020, a third party administrator will pay .009 of 1 percent of its correctly reported gross amount of administrative or service fees received in 2019.

In 2020, to fund the Workers' Compensation Research and Evaluation Group's activities, a workers' compensation certified self-insurer will pay .034 of 1 percent of the tax base calculated under Labor Code §407.103(b), and a workers' compensation self-insurance group will pay .067 of 1 percent of the tax base calculated under Labor Code §407A.301(c).

Finally, in 2020, a workers' compensation certified self-insurer will pay 2 percent of the tax base calculated under Labor Code §407.103(b).

Except for workers' compensation certified self-insurers, there are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the maintenance tax or fee. Typically, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. These persons are similarly compensated between $26 and $44 an hour.

The actual time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, the department estimates it will take six hours to complete the form. In the case of a certified self-insurer, DWC will calculate the maintenance tax and bill the certified self-insurer. The requirement to pay the maintenance tax or fee is the result of the legislative enactment of the statutes that impose the maintenance tax or fee and is not a result of the adoption or enforcement of this proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined the proposal may have an adverse economic effect on approximately 118 insurance companies and HMOs and approximately 540 third party administrators that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from the costs of the maintenance taxes and fees. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit and cost note portion of this proposal is equally applicable to small or micro businesses.

The total cost of compliance to large businesses and small or micro businesses does not depend on the size of the business. For insurers in the following lines of insurance, the cost of compliance depends on the amount of gross premiums in 2019: motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; and life, health, and accident insurance. For annuity and endowment contracts, the cost of compliance depends on the amount of gross considerations in 2019. For HMOs, the cost of compliance depends on the number of enrollees in 2019. For third party administrators, the cost of compliance depends on the amount of correctly reported gross administrative or service fees in 2019. For workers' compensation certified self-insurers and workers' compensation certified self-insurance groups, the cost of compliance depends on the tax base calculated under Labor Code §407.103(b).

In accordance with Government Code §2006.002(c-1), the department considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to provide the rates of assessment for maintenance taxes and fees for 2020 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; HMOs; third party administrators; and workers' compensation certified self-insurers.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting different tax rates for small and micro businesses, and (iii) exempting small and micro businesses from the tax requirements.

Not adopting the proposed rule. Under Insurance Code §251.003, if the Commissioner does not advise the Comptroller of the applicable maintenance tax assessment rates, the Comptroller must assess taxes based on the previous year's assessment. Using the previous year's rates and the estimated assessment bases for 2019, the department estimates revenue collections would exceed amounts needed by approximately $5.6 million. If no rule is adopted, the Comptroller would collect too much revenue to fund the department's costs. The department has rejected this option.

Adopting different taxes for small and micro businesses. The current methodology is already the most equitable methodology the department can develop. The department applies an assessment methodology that contemplates a smaller assessment for small or micro businesses because the assessment is determined based on number of enrollees, gross premiums, or gross amount of administrative or service fees. The department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has fewer enrollees, lower gross premiums, or a lower gross amount of administrative or service fees. However, based on the proposed rule, a small or micro business would pay a smaller assessment, and would reduce its risk of economic harm. The department has rejected this option.

Exemption of small and micro businesses from the tax requirements. As noted above, the current methodology is already the most equitable methodology the department can develop. The tax methodology currently used contemplates a small business paying lower maintenance taxes because assessments are based on number of enrollees, gross premiums, or gross amount of administrative or service fees. A small or micro business that has fewer enrollees, has lower gross premiums, or receives fewer gross administrative or service fees would be assessed

lower taxes. If the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. The department has rejected this option.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

The department has determined that the proposal will not have an adverse economic effect on rural communities, because maintenance taxes and fees are not collected from rural communities. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address rural communities in its regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that the proposed amendments do impose a possible cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 271.002 - 271.006; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302 direct the department to annually impose maintenance taxes and fees on each authorized insurer and the proposed amendments are necessary to comply with this requirement.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the proposed rule or its implementation:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will require decreases in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m. Central time on December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m. Central time on (date). If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 271.002 - 271.006; 964.068; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) provides that the Commissioner administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the Commissioner ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller, other money in the Texas Department of Insurance operating account be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the Commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commis-

sioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the Commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the Commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance.

Insurance Code §254.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the Commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the Commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers.

Insurance Code §257.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from

the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code §258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the Commissioner on HMOs may not exceed $2 per enrollee. Section 258.003 also provides that the Commissioner annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §259.003 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §259.004 requires a third party administrator to pay maintenance taxes under Chapter 259 on the administrator's correctly reported administrative or service fees.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and must be reported and paid separately from premium and retaliatory taxes.

Insurance Code §271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent.

Insurance Code §271.004 provides that the Commissioner annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the Commissioner consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052.

Insurance Code §271.005 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance.

Insurance Code §271.006 requires an insurer to pay maintenance fees under Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code, Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2 percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C, which was recodified as Insurance Code §2053.202 by House Bill 2017, 79th Legislature, Regular Session (2005). Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter

255. Finally, Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the Commissioner of Insurance to set and certify to the Comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the Commissioner of Insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the Commissioner of Insurance must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner of Insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the Workers' Compensation Research and Evaluation Group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2 percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the Commissioner of Insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Labor Code §407.104(b) provides that the department compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer must remit the taxes and fees to DWC.

Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section be collected by the Comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it be collected by the Comptroller in the manner provided by Insurance Code Chapter 255.

CROSS-REFERENCE TO STATUTE. Amendments in this proposal to §1.414 affect Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001, 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004;; and 271.002 - 271.006; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

§1.414. Assessment of Maintenance Taxes and Fees, 2020 [~~2019~~].

(a) The department assesses the following rates for maintenance taxes and fees on gross premiums of insurers for calendar year 2019 [~~2018~~] for the lines of insurance specified in paragraphs (1) - (9) of this subsection:

(1) for motor vehicle insurance, under Insurance Code §254.002, the rate is .044 [~~.049~~] of 1 percent;

(2) for casualty insurance and fidelity, guaranty, and surety bonds, under Insurance Code §253.002, the rate is .053 of 1 percent;

(3) for fire insurance and allied lines, including inland marine, under Insurance Code §252.002, the rate is .274 [~~.303~~] of 1 percent;

(4) for workers' compensation insurance, under Insurance Code §255.002, the rate is .067 [~~.069~~] of 1 percent;

(5) for workers' compensation insurance, under Labor Code §403.003, the rate is 2.0 percent;

(6) for workers' compensation insurance, under Labor Code §405.003, the rate is .034 of 1 percent;

(7) for workers' compensation insurance, under Labor Code §407A.301, the rate is 2.0 percent;

(8) for workers' compensation insurance, under Labor Code §407A.302, the rate is .067 [~~.069~~] of 1 percent; and

(9) for title insurance, under Insurance Code §271.004, the rate is .068 [~~.078~~] of 1 percent.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2019 [~~2018~~] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, under Insurance Code §257.002, is .040 of 1 percent.

(c) The department assesses rates for maintenance taxes for calendar year 2019 [~~2018~~] for the following entities as follows:

(1) under Insurance Code §258.003, the rate is $.28 [~~$.24~~] per enrollee for single service health maintenance organizations, $.84 [~~$.72~~] per enrollee for multiservice health maintenance organizations, and $.28 [~~$.24~~] per enrollee for limited service health maintenance organizations; and

(2) under Insurance Code §259.003, the rate is .009 [~~.008~~] of 1 percent of the correctly reported gross amount of administrative or service fees for third party administrators. [~~; and~~]

[~~(3) under Insurance Code §260.002, the rate is .010 of 1 percent of the correctly reported gross revenues for nonprofit legal services corporations issuing prepaid legal services contracts.~~]

(d) Under Labor Code §405.003, each certified self-insurer must pay a maintenance tax for the Workers' Compensation Research and Evaluation Group in calendar year 2020 [~~2019~~] at a rate of .034 of 1 percent of the tax base calculated under Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(e) Under Labor Code §405.003 and §407A.301, each workers' compensation self-insurance group must pay a maintenance tax for the Workers' Compensation Research and Evaluation Group in calendar year 2020 [~~2019~~] at a rate of .034 of 1 percent of the tax base calculated under Labor Code §407.103(b).

(f) Under Labor Code §407.103 and §407.104, each certified self-insurer must pay a self-insurer maintenance tax in calendar year 2020 [~~2019~~] at a rate of 2.0 percent of the tax base calculated under Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(g) The enactment of Senate Bill 14, 78th Legislature, Regular Session (2003), relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(h) The taxes assessed under subsections (a), (b), (c), and (e) of this section will be payable and due to the Comptroller of Public Accounts on March 1, 2020 [~~2019~~].

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 October 28, 2019.

TRD-201903988
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6584

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CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER W. MISCELLANEOUS RULES FOR GROUP AND INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

28 TAC §3.3602

The Texas Department of Insurance proposes new 28 TAC §3.3602, relating to requirements for short-term limited-duration coverage. Section 3.3602 implements Senate Bill 1852, 86th Legislature, Regular Session (2019). The proposed section also provides consumer protections related to renewability and provides consumers notice of the protections they have when purchasing such products.

EXPLANATION. Proposed new §3.3602 is necessary to implement SB 1852. Insurance Code §1509.002(a) requires the Commissioner, by rule, to prescribe a disclosure form to be provided with a short-term limited-duration insurance policy and application. Insurance Code §1509.002(c) also requires an insurer issuing a short-term limited-duration insurance policy to adopt procedures in accordance with the rule to obtain a signed form from the insured acknowledging that the insured received the disclosure form. Section 1509.002(c) requires the rule to allow for electronic acknowledgment.

Section 3.3602(a). Proposed new §3.3602(a) describes the purpose of the proposed new section, which is to define short-term limited-duration insurance and requirements for short-term limited-duration coverage. Proposed new §3.3602(a) also provides that the proposed new section applies to any individual or group accident and health insurance policy or certificate issued under Insurance Code Chapter 1201 or 1251.

Section 3.3602(b). Proposed new §3.3602(b) provides that, for purposes of 28 TAC Chapters 3, 21, and 26, short-term limited-duration insurance has the meaning given in Insurance Code §1509.001. Insurance Code §1509.001 states that, in Chapter 1509, "short-term limited-duration insurance" has the meaning assigned by 26 C.F.R. §54.9801-2. Title 26 C.F.R. §54.9801-2 defines "short-term, limited-duration" insurance to mean "health insurance coverage provided pursuant to a contract with an issuer that: [h]as an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total," and displays a specified notice along with any additional information required by state law.

Section 3.3602(c). Proposed new §3.3602(c) provides that a policy or certificate must provide benefits consistent with the minimum standards for the type of coverage offered. Proposed new §3.3602(c) is included to clarify that the rules in the subchapter are not inclusive of all requirements that apply to short-term limited-duration plans. For example, many requirements in Title 8

of the Insurance Code (concerning Health Insurance and Other Health Coverages) apply, including general provisions in Chapters 1201 and 1251, and mandated benefit requirements under Title 8, Subtitle E.

Section 3.3602(d). Proposed new §3.3602(d) provides the requirements for individual and group short-term limited-duration coverage.

Proposed new §3.3602(d)(1) provides that short-term limited-duration coverage may not be marketed as guaranteed renewable. Proposed new §3.3602(d)(1) is included because, by definition, under Insurance Code §1509.001, short-term limited-duration insurance cannot be renewed for a total duration that exceeds 36 months. Since the term "guaranteed renewable" implies a continuous right to renew, use of the term with short-term limited-duration insurance would be misleading.

Proposed new §3.3602(d)(2) provides that short-term limited-duration coverage must be marketed either as nonrenewable, or as renewable at the option of the policyholder or enrollee, if the enrollee contributes to the premium. Proposed new §3.3602(d)(2) allows issuers to choose whether to issue short-term limited-duration plans that are either nonrenewable or renewable and to ensure that plans are marketed consistent with the terms of the policy. To avoid misleading prospective enrollees, if an issuer opts to permit renewability it must do so at the option of the policyholder. In a group policy in which the enrollee contributes to the premium, the enrollee controls the renewal option.

Proposed new §3.3602(d)(3) provides that short-term limited-duration coverage must clearly state the duration of the initial term and the total maximum duration, including renewal options. Proposed new §3.3602(d)(3) helps ensure that prospective enrollees are fully informed regarding how long they can keep the coverage.

Proposed new §3.3602(d)(4) provides that short-term limited-duration coverage may not be modified after the date of issue, except by signed acceptance of the enrollee. Proposed new §3.3602(d)(4) ensures that the enrollee is informed and accepts the changes in coverage. Proposed new §3.3602(d)(4) also ensures that an issuer does not circumvent the policy terms of renewability by unilaterally modifying the coverage.

Proposed new §3.3602(d)(5) provides requirements for renewable, short-term limited-duration coverage. Proposed new §3.3602(d)(5)(A) provides that a short-term limited-duration individual policy or group certificate must include a statement that the enrollee has a right to continue the coverage in force by timely payment of premiums for the number of terms listed. Proposed new §3.3602(d)(5)(A) provides for the enrollee to be informed about the enrollee's right to continue coverage when timely premium payments are made.

Proposed new §3.3602(d)(5)(B) provides that a short-term limited-duration individual policy or group certificate must include a statement that the issuer will not increase premium rates or make changes in provisions in the policy or certificate on renewal based on individual health status. Proposed new §3.3602(d)(5)(B) ensures that coverage that is marketed as renewable at the option of the enrollee does not require additional underwriting or change the terms of coverage at renewal.

Proposed new §3.3602(d)(5)(C) provides that, if applicable, a short-term limited-duration individual policy or group certificate must include a statement that the issuer retains the right, at the time of policy renewal, to make changes to premium rates by class. Proposed new §3.3602(d)(5)(C) is included to make clear that a renewable policy is not subject to individual rating adjustments at renewal. The statement would not be required when an issuer chooses to offer a fixed premium for the life of the policy.

Proposed new §3.3602(d)(5)(D) provides that, if a short-term limited-duration individual policy or group certificate is renewable, it must include a statement that the issuer, at the time of renewal, may not deny renewal based on individual health status. Proposed new §3.3602(d)(5)(D) helps ensure that coverage that is marketed as renewable at the option of the enrollee provides contractual terms that are consistent with that marketing.

Section 3.3602(e). Proposed new §3.3602(e) provides that an issuer offering short-term limited-duration insurance must include a written disclosure form that is consistent with the form in proposed Figure: 28 TAC §3.3602(e) and the requirements of this proposed section. Proposed new §3.3602(e) is necessary because Insurance Code §1509.002(a) requires the Commissioner by rule to prescribe a disclosure form to be provided with a short-term limited-duration insurance policy and application.

In addition to the elements specifically required by Insurance Code §1509.002(b), the proposed disclosure form includes a statement that the plan is exempt from the federal Affordable Care Act and may not cover all necessary care. This information informs prospective enrollees about possible benefit limitations.

Along with information about renewability, the proposed form states that "[t]he amount of your premium payment might change after you renew your plan, but the amount can't go up because of a change in your health. A change in your health can't affect your benefits or your right to renew." These statements are included for consistency with proposed new §3.3602(d)(2) and (5).

Along with the open enrollment information, the proposed form includes an explanation that prospective enrollees can sign up for a plan not covered by the ACA at any time, but that they can be denied for health reasons when they sign up for a new plan. This information is provided to inform prospective enrollees about underwriting that may occur during the initial application for short-term limited-duration coverage.

The proposed form also references Healthcare.gov. This information provides prospective enrollees with a resource to research open enrollment information, including eligibility information about qualifying life events for enrollment at other times.

Following information on the plan's deductible, the proposed form includes information on whether the plan uses a provider network. This information helps to ensure prospective enrollees understand the nature of coverage and whether limits apply based on their choice of provider.

The proposed form uses a chart to describe covered services and any limits that apply to those services. This information is necessary because Insurance Code §1509.002(b)(7)(A)-(H) and (8) require that the disclosure form state whether certain health care services are covered, specifically: prescription drug coverage, mental health services, substance abuse treatment, maternity care, hospitalization, surgery, emergency health care, preventive health care, and any other information the Commissioner determines is important for a purchaser of a short-term limited-duration policy.

Within the chart of covered services, the proposed form expands categories required under Insurance Code §1509.002(b)(7)(B), (C), (D), (E), and (F) in order to separate coverage for facility fees and physician fees. In describing maternity care coverage,

the form also separates prenatal visits from physician services at delivery. The form expands on emergency health care to identify coverage for urgent care and ambulance services. The form adds primary care and specialist care office visits. Finally, the form includes the text of the federally-required notice.

Issuers are permitted, but not required, to include cost-sharing information in the benefits chart. This flexibility allows an issuer to incorporate key plan summary information within the disclosure document, rather than producing and delivering a separate document that may be repetitive.

The form also includes the text of the federally required notice. This is included because Insurance Code §1509.001 defines short-term limited-duration insurance based on the federal definition, at 45 C.F.R. Section 54.9801-2. The federal regulation defining "short-term, limited-duration insurance" includes the requirement to provide a specific notice.

Section 3.3602(f). Proposed new §3.3602(f) provides the disclosure form requirements. Proposed new §3.3602(f) is necessary because Insurance Code §1509.002(b) provides the information that the disclosure form must include.

Proposed new §3.3602(f) provides that in creating the disclosure form, issuers must follow all instructions in the proposed subsection. Proposed new §3.3602(f) ensures that issuers produce the disclosure form correctly and accurately.

Proposed new §3.3602(f)(1) provides that a disclosure form must be produced for each plan option that the issuer makes available and reflect the specific terms of the plan. Proposed new §3.3602(f)(1) is included because the nature of the information required by Insurance Code §1509.002(b) varies across plan offerings. For example, the plan's duration, renewal options, benefits, deductible, coverage maximum, and coverage for preexisting conditions can vary across different issuers and plans offered by an individual issuer. In order to accurately educate the prospective enrollee regarding the plan or plans available, a single disclosure form should not be used to reflect multiple plan options.

Proposed new §3.3602(f)(2) provides that the disclosure form must accurately represent the short-term limited-duration coverage. Proposed new §3.3602(f)(2) is provided to fully inform the prospective enrollee about the coverage offered.

Proposed new §3.3602(f)(3) provides that if the disclosure form in proposed new Figure 28 TAC §3.3602(e) does not accurately represent the plan being offered, the issuer may modify the form as necessary. When filing the form with the department, the issuer must clearly identify any changes made and explain the reason for modifying the form. Proposed new §3.3602(f)(3) provides flexibility to ensure the disclosure form does not provide inaccurate information. In reviewing filed disclosures, the department will ensure that the changes made accurately represent the terms of the plan.

Proposed new §3.3602(f)(4) provides that the chart under disclosure form paragraph (9) may be supplemented to include cost-sharing information for each benefit. Proposed new §3.3602(f)(4) provides flexibility for issuers that wish to use the disclosure form as a primary plan summary document, rather than creating a separate document that may duplicate much of the information in the form.

Proposed new §3.3602(f)(5) provides that the disclosure form in Figure: 28 TAC §3.3602(e) may be combined with the outline of coverage required under Insurance Code §1201.107 and §3.3093(4) of this title if certain requirements are met. Proposed new §3.3602(f)(5) provides flexibility for issuers in the individual market, which are required to provide an outline of coverage document that includes much of the same information that is contained in the disclosure form. The ability to combine the documents eliminates what would otherwise be duplicative disclosure requirements and enables a more streamlined approach.

Section 3.3602(g). Proposed new §3.3602(g)(1) provides that the disclosure form must be filed with the department for review before use, consistent with filing procedures in 28 TAC Chapter 3, Subchapter A.

Proposed new §3.3602(g)(2) requires that a disclosure form must be provided in writing to a prospective enrollee before the individual completes an application or makes an initial premium payment, application fee, or other fee; and at the time the policy or certificate is issued. This makes clear that the disclosure should be available in writing before, and not after, a prospective enrollee submits an application. Proposed new §3.3602(g)(2) is necessary because Insurance Code §1509.00(2)(a) requires a disclosure form to be provided with a short-term limited-duration policy and application.

Proposed new §3.3602(g)(3) provides that the disclosure form must be signed by the enrollee to acknowledge receipt at the time of application. An electronic signature is acceptable if the issuer's procedures comply with Insurance Code Chapter 35.

Proposed new §3.3602(g)(1) through (3) are necessary because Insurance Code §1509.002(c) provides that an issuer issuing a short-term limited-duration insurance policy to adopt procedures in accordance with the rule to obtain a signed form from the enrollee acknowledging that the enrollee received the disclosure form. Insurance Code §1509.002(c) also provides that the rule must allow for electronic acknowledgment.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, manager of the Life and Health Lines Office, has determined that during each year of the first five years the proposed new section is in effect, there will not be a fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Bowden anticipates no measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Ms. Bowden expects that administering the proposed section will have the public benefit of ensuring that the department's rules conform to Insurance Code Chapter 1509. The proposed section also provides consumer protections related to renewability. Finally, the proposed section gives prospective enrollees adequate notices of their protections concerning short-term limited-duration insurance.

Ms. Bowden expects that the proposed new section will impose an economic cost on persons required to comply with the new section. The cost of compliance results from disclosure and acknowledgment requirements under Insurance Code §1509.002(a) and (c). It is not clear how much of an economic cost the rule will impose on persons required to comply with the new section. Before January 1, 2020, issuers in Texas will not

be permitted to sell short-term health insurance products that could last, including any renewals, beyond a year. Under Insurance Code Chapter 1509, issuers will be able to modify their products to be renewed up to a total of three years. Although this results in a benefit to issuers, they will also incur a new cost by following signed disclosure requirements prescribed by the department.

Issuers could face some administrative computer programming costs associated with drafting the content of the disclosure information and integrating it into their electronic systems, distributing it with policies and applications, and obtaining and retaining enrollee signatures. Issuers might also have to modify their marketing materials. Although the department will not impose a filing fee, a fee of up to $13.50 will apply when the disclosure form is filed with the department through the System for Electronic Rate and Form Filings (SERFF).

Issuers' staff costs may vary depending on the skill level required, the number of staff required, and the geographic location where the work is done. The 2018 median hourly wages for workers in Texas are reported by the Texas Wages and Employment Projections database and developed and maintained by the Labor Market and Career Information Development Department of the Texas Workforce Commission. The department used this information to estimate labor costs. This information can be found at www.texaswages.com/WDAWages.

Issuers may calculate the total cost of labor for each category by multiplying the number of estimated hours for each component by the median hourly wage for each category of labor. The median hourly wage for a computer programmer is $40.86. The median hourly wage for an administrative assistant is $16.47.

Administrative expenditures could also include postage and the cost of printing new disclosure forms or revising outlines of coverage forms that include the disclosure information. It is not feasible for the department to estimate the total increased printing, copying, mailing, and transmitting costs related to compliance with this proposal because there are many factors involved that are not quantifiable by the department. But according to the United States Postal Service business price calculator, available at www.dbcalc.usps.gov, the current cost to mail a machinable letter in a single standard business mail envelope with a weight of 3.5 ounces to a standard five-digit ZIP code in the United States is $1.15. The department estimates that a standard business envelope costs 1.6 cents. The department further estimates that printing or copying costs between six to eight cents per page. The department believes that mailing costs can be avoided by providing the disclosure information with the outline of coverage at the time of issuance or renewal.

The department estimates that preparing the disclosure form as a stand-alone document or changing the outline of coverage form to include the disclosure information will likely require a one-time cost for approximately two to 10 hours of administrative staff time. The cost will vary depending on whether an administrative assistant, a computer programmer, or a combination of both positions, perform these functions.

Additionally, issuers that choose to permit renewals will be required to allow renewal at the option of the enrollee, without increasing rates based on individual health status. This could be expected to minimally increase expected claims costs when compared to making renewal at the option of the issuer. However, the department is unaware of any issuers currently that do not give the renewal option to the enrollee. If this is correct, there will be no additional cost to those issuers.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed new section will not have an adverse economic effect or a disproportionate economic impact on rural communities. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis to address them.

The department has determined that the proposed new section may have an adverse economic effect or a disproportionate economic impact on small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The department estimates that the proposed new section may affect at least thirteen issuers that currently offer short-term limited-duration coverage, including an estimated one to three small or micro businesses. In 2018, only one of the affected issuers had less than $6 million in premium revenue, and only two issuers were independently owned. The primary objectives of this proposal are to require disclosures and protections related to short-term health insurance products. The department considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives:

(1) The department considered not proposing the new section. This would not comply with Insurance Code §1509.002(a), which requires the Commissioner to adopt a disclosure form by a rule. Not requiring the filing of the disclosure would violate Insurance Code §31.002(3), which requires the department to ensure that the Insurance Code is executed. If the department permitted policies advertised as renewable to be renewed only at the discretion of the issuer, the department's rules would not comply with Insurance Code §31.002(4), which requires the department to protect and ensure the fair treatment of consumers.

(2) The department also considered exempting small or micro businesses from the requirements of the rule. This would also prevent compliance with Insurance Code §1509.002(a), which applies regardless of the size of the regulated entity, and this would result in some prospective enrollees not receiving the disclosure required by the proposed section.

(3) The department also considered imposing different requirements on small or micro businesses. The department considered a shorter disclosure form for small or micro businesses, but this would provide less consumer protection without any material reduction of costs, because it would still impose costs similar or equal to those for the proposed disclosure form. The disclosure will likely only need to be filed once because it can be filed with variable language, allowing the filed disclosure to be produced for use with many different policies. Regarding the requirements related to renewability under proposed §3.3602(d), the department considered providing a longer implementation period for small or micro businesses, but rejected this option because it does not appear that any issuer, including any small or micro business, is currently offering policies renewable only at the option of the issuer. Given that issuers currently allow renewability at the option of the enrollee, small and micro business issuers may not need any additional implementation time.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does impose a possible cost on regulated persons. However, no rule repeal or rule amendments are required under Government

Code §2001.0045 because the proposed 28 TAC §3.3602 is necessary to implement legislation, which meets the exception under Government Code §2001.0045(c)(9). Specifically, the proposed rule implements Insurance Code §1509.002(a) and (c), as added by SB 1852, 86th Legislature, 2019.

Insurance Code §1509.002(a) and (b) requires that the Commissioner adopt by rule a disclosure form that contains specific information, including any other information the Commissioner determines is important for a purchaser of a short-term limited-duration insurance policy. The department has attempted to minimize the cost by not charging a state filing fee for the disclosure form.

The department does not believe the renewability requirement imposes a cost on issuers because issuers are currently unable to permit renewal beyond 12 months. Those that currently offer renewal of three- or six-month policies appear to do so at the option of the enrollee, consistent with what is proposed here. The department notes that the section gives an issuer the option to allow renewal, but at the option of the policyholder, or enrollee, if the enrollee contributes to the premium. The section does not restrict an issuer's ability to fully underwrite before the initial issuance of the policy, or to increase rates at renewal on a class basis. Even if giving this option to the prospective enrollee were to cause a cost for issuers, this protection for policyholders is necessary to protect the health, safety, and welfare of the residents of this state under §2001.0045(c)(6), because prospective enrollees could be left without health insurance coverage for significant periods of time. For example, a prospective enrollee could purchase a short-term policy on June 1, 2020, relying on the fact that the coverage could be renewed to June 1, 2022, with the intent that they would change to major medical coverage during open enrollment in December of 2020 or 2021, if necessary. If a prospective enrollee becomes seriously ill on February 1, 2021, and the issuer has the option to deny renewal on June 1, 2021, the prospective enrollee could be without health insurance until January 1st, 2022, potentially resulting in significant harm to their health, safety, and welfare. The proposed section would give the prospective enrollee certainty in their planning. If the issuer offers a renewal option, the prospective enrollee will be able to take it if they need it.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed new section is in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will not limit an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., Central time, on December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2817 at 10:00 a.m. Central time on November 15, 2019 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. The department proposes §3.3602 under Insurance Code §§1201.006, 1201.101(a), 1201.108(b), 1202.051, 1251.008, 1509.002, and 36.001.

Insurance Code §1201.006 provides that the Commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201.

Insurance Code §1201.101(a) provides that the Commissioner adopt reasonable rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including disclosures required to be made in connection with the sale.

Insurance Code §1201.108(b) provides that the Commissioner prescribe the format and content of an outline of coverage required by §1201.107.

Insurance Code §1202.051(d) provides that the Commissioner adopt rules necessary to implement §1202.051 and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Chapter 1251.

Insurance Code §1509.002 provides that the Commissioner by rule prescribe a disclosure form to be provided with a short-term limited-duration insurance policy and application, that the disclosure form prescribed by rule may include any other information the Commissioner determines is important for a purchaser of a short-term limited-duration insurance policy, and that the rule must allow for electronic acknowledgement.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.3602 implements Insurance Code Chapter 1509, enacted by SB 1852, 86th Legislature, Regular Session (2019).

§3.3602. Requirements for Short-Term Limited-Duration Coverage.

(a) The purpose of this section is to define short-term limited-duration insurance and address requirements for short-term limited-duration coverage. This section applies to any individual or group accident and health insurance policy or certificate issued under Insurance Code Chapters 1201 or 1251.

(b) For the purposes of Chapters 3, 21, and 26 of this title, "short-term limited-duration insurance" has the meaning given in Insurance Code §1509.001.

(c) An individual policy or group certificate of short-term limited-duration insurance must provide benefits consistent with the minimum standards for the type of coverage offered.

(d) Short-term limited-duration coverage, including individual policies and group certificates:

(1) may not be marketed as guaranteed renewable;

(2) must be marketed either as nonrenewable, or renewable at the option of the policyholder or enrollee, if the enrollee contributes to the premium;

(3) must clearly state the duration of the initial term and the total maximum duration including any renewal options;

(4) may not be modified after the date of issue, except by signed acceptance of the policyholder or the enrollee, if the enrollee contributes to the premium; and

(5) if coverage is renewable, a short-term limited-duration individual policy or group certificate must:

(A) include a statement that the enrollee has a right to continue the coverage in force by timely payment of premiums for the number of terms listed;

(B) include a statement that the issuer will not increase premium rates or make changes in provisions in the policy, or certificate, on renewal based on individual health status;

(C) if applicable, include a statement that the issuer retains the right, at the time of policy renewal, to make changes to premium rates by class; and

(D) include a statement that the issuer, at the time of renewal, may not deny renewal based on individual health status.

(e) An issuer offering short-term limited-duration insurance must include an accurate written disclosure form that is consistent with the form and instructions prescribed in Figure: 28 TAC §3.3602(e) and the requirements of this section.
Figure: 28 TAC §3.3602(e)

(f) In creating a disclosure form, issuers must follow all instructions provided in this subsection:

(1) The disclosure must be produced for each plan option that the issuer makes available and reflect the specific terms of the plan.

(2) The disclosure form must accurately represent the short-term limited-duration coverage being provided.

(3) If the disclosure form provided in Figure 28 TAC §3.3602(e) does not accurately represent the plan being offered, the issuer may modify the form as necessary. When filing the form with the department, the issuer must clearly identify any changes made and explain the reason for modifying the form.

(4) The chart under disclosure form paragraph (9) may be supplemented to include cost-sharing information for each benefit.

(5) The disclosure form provided in Figure 28 TAC §3.3602(e) (the disclosure form) may be combined with the outline of coverage required under §3.3093(4) of this title (the outline of coverage) only if the combined disclosure form and outline of coverage is assembled and combined in the following order:

(A) paragraph (1) of the outline of coverage;

(B) paragraph (2) of the outline of coverage is replaced with paragraphs (1) through (8) of the disclosure form;

(C) paragraph (3) of the outline of coverage is combined with paragraph (9) of the disclosure form, using as a minimum, the information contained in the chart in paragraph (9) of the disclosure form;

(D) paragraph (4) of the outline of coverage;

(E) paragraph (5) of the outline of coverage may be removed, as it is addressed in paragraph (3) of the disclosure form;

(F) paragraph (6) of the outline of coverage; and

(G) paragraphs (10) and (11) of the disclosure form.

(g) A disclosure form under this section must be:

(1) filed with the department for review before use, consistent with filing procedures in Subchapter A of this chapter;

(2) provided in writing to a prospective enrollee:

(A) before the individual completes an application or makes an initial premium payment, application fee, or other fee; and

(B) at the time the policy or certificate, is issued; and

(3) signed by the enrollee to acknowledge receipt at the time of application. An electronic signature is acceptable if the issuer's procedures comply with Insurance Code Chapter 35.

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 October 28, 2019.

TRD-201904002
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6584

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER O. STATISTICAL PLANS [~~TEXAS COMMERCIAL LINES STATISTICAL PLAN~~]

28 TAC §5.9502

The Texas Department of Insurance proposes new 28 TAC §5.9502, relating to the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks (statistical plan). The proposed rule is necessary to effectively implement Insurance Code Chapter 38, Subchapter E for statistical data collection in response to a catastrophe; standardize and streamline the catastrophe data reporting requirements to enhance efficiency and predictability for insurers and TDI; allow for better experience comparisons by TDI and the industry in general; ensure TDI has consistent, reliable information to evaluate the insurance market's health after a catastrophe; assist TDI in swiftly compiling complex data; allow for more timely analysis by TDI; and provide information about the impact of catastrophe events to policymakers.

The proposed rule adopts by reference a new statistical plan that will apply to reporting periods beginning on or after January 1, 2020. TDI also proposes changing the title of Subchapter O of 28 TAC Chapter 5 from "Texas Commercial Lines Statistical Plan" to "Statistical Plans."

EXPLANATION. Replacing numerous, distinct data calls with a single statistical plan for catastrophe data collection will ensure consistent, predictable, efficient data collection in the wake of a catastrophe. Implementing a single statistical plan for catastrophe data collection allows insurers to predict what data will be necessary and make business decisions about the most efficient way to report that data to avoid having to scramble during a catastrophe.

The statistical plan describes the information responding insurers will provide to TDI following a catastrophe event. The proposed rule largely adopts the elements of the TDI Catastrophe Data Call Guidelines issued in April 2019.

New 28 TAC §5.9502 is essential to ensure that insurers use the new statistical plan beginning January 1, 2020. Previously, TDI would determine the data elements for each specific catastrophe event, which made requirements less predictable for insurers and meant that insurers had to program their systems to report the data after the event occurred. This also meant that TDI received varying qualities of data that required significant staff resources and time to clean up and organize. A statistical plan will simplify the reporting process, making reporting easier for insurers and analysis easier for TDI, which will produce more timely responses by TDI to assess the insurance market's health.

Insurance Code §38.204 and §38.207 give the Commissioner authority to adopt such a statistical plan. Additionally, under Insurance Code §38.001, TDI may address a reasonable inquiry to any insurance company or other holder of an authorization, such as a surplus lines or farm mutual insurer, about the business condition or matters TDI considers necessary for the public good or for the proper discharge of TDI's duties.

The rule proposal adopts the statistical plan by reference. The statistical plan will be applicable January 1, 2020 and will be published on TDI's website at www.tdi.texas.gov.

Purpose. This information is important to TDI's ability to evaluate the financial condition of insurers after a catastrophe and to ensure consumers are protected. Standardized, high-quality, consistent data will result in better decision making and more efficient solutions to determine the insurance market's health after a catastrophe. This proposed rule will also decrease industry costs over time because it allows insurers to implement a predictable and streamlined catastrophe statistical plan and data reporting process.

Applicability and Notice to Insurers. This proposed rule will assist TDI in timely collecting vital data about the financial condition of insurers after a catastrophe. It will also simplify and standardized the catastrophe-data-reporting process for insurers.

Insurers, including surplus lines and farm mutual insurers, that write property or automobile insurance in Texas, will report data under §38.001 under the statistical plan. Whether an insurer is required to report data for a catastrophe in a given year depends on the amount of Texas direct written premiums the insurer reported in the prior calendar year. This is different from previous data calls that required all insurers to report. TDI will use premiums the insurer reported on its Annual Statement to determine whether the insurer is required to report. For an alien surplus lines insurer, TDI will use premiums provided by the Surplus Lines Stamping Office of Texas to make the determination. Insurers that are not licensed to write business in Texas or not eligible to do business in Texas on a surplus lines basis must not report data, even if the insurer has claims in Texas resulting from the catastrophe.

TDI will activate the statistical plan data reporting after a catastrophe in Texas. Insurers are not required to report data under the statistical plan until TDI has activated data reporting. TDI will activate reporting under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov. The bulletin and statistical plan will provide instructions for responding insurers. These reports will be used to determine the financial impact of a catastrophe on insurers. A response made under §38.001 that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. Insurers should identify what documents are privileged or confidential in their responses.

Proposed Rule Provisions. Subsection 5.9502(a) provides information about the rule's purpose and applicability. This subsection identifies which insurers must report under the statistical plan. This subsection also specifies that insurers are required to report their premium and loss experience after each catastrophe. This subsection is necessary to clarify the proposed rule's purpose and applicability.

Subsection 5.9502(b) provides information about notice to insurers if reporting under the statistical plan is activated for a specific catastrophe event. TDI will post notice under §38.001 through a bulletin on its website at www.tdi.texas.gov. This subsection is essential to notify insurers about the statistical plan activation process.

Subsection 5.9502(c) states that a response under §5.9502 must comply with the statistical plan. This subsection is essential to ensure that all responses comply with the statistical plan.

Subsection 5.9502(d) clarifies that if the submitted reports are otherwise confidential by law, they will remain confidential as provided by Insurance Code §38.001(d). The rule specifies that insurers should identify what documents are privileged or confidential. This subsection is important to clarify that a response made under §38.001 that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Subsection 5.9502(e) adopts the statistical plan by reference. This subsection is essential to adopt the statistical plan for insurers.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Brian Ryder, senior actuary and team lead, Regulatory Policy Division, has determined that during each year of the first five years the proposed rule is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed rule does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed rule. Mr. Ryder does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Standardized, high-quality, and consistent data will result in better decision making, more

efficient solutions, and accurate identification of the insurance market's health after a catastrophe. This proposed rule will also decrease industry costs over time due to the implementation of a streamlined, standardized reporting process after a catastrophe.

The statistical plan is limited in scope but serves an important purpose. The information collected under it is essential to ensure that vulnerable consumers are protected and to provide TDI with the necessary data to evaluate market health, activity, and access.

Associated costs represent mostly upfront costs to the insurer. Once the internal procedures are revised, an insurer will have a process in place making future catastrophe data responses cost effective and efficient. Compared to the current one-time data call system, TDI anticipates that costs associated with catastrophe data reporting will decrease for insurers and TDI over time and will likely result in an overall reduction in costs.

For each year of the first five years the proposed rule is in effect, Mr. Ryder expects that administering the proposed rule will have the public benefit of ensuring that TDI's rules conform to Insurance Code §38.001, §38.204, and §38.207. This proposed rule will assist TDI in collecting vital data about the financial condition of insurers after a catastrophe to allow the proper discharge of TDI's duties under Insurance Code §31.002.

Mr. Ryder expects that the proposed rule will impose an economic cost on persons who must implement the statistical plan requirements and comply with the proposed rule.

Because TDI has issued catastrophe data calls in the past, insurers already have a foundation in place for responding, including staff, internal processes, and forms or applications. Thus, for insurers the potential additional costs arise from revising an insurer's internal processes to comply with the proposed new statistical plan. The extent to which those internal processes and documents will need to be revised will depend on each insurer's past and future business decisions, but the data to be collected under the statistical plan will be substantially the same whether TDI collects the data through one-time data calls or through this statistical plan. Any change in the process results mainly from implementing the new reporting procedure under the statistical plan. Importantly, however, adopting these reporting requirements as a statistical plan provides predictability to insurers with respect to which companies will be required to report and what information those companies must report. It also provides predictability to TDI in the form of standardized, organized data.

Insurers only need to implement the new statistical plan procedures once. And they will be able to use those revised procedures multiple times without change. This will result in lower costs over time for both TDI and the industry, higher quality data, and increased efficiency. In addition, TDI will receive consistent data over time allowing for accurate experience comparisons. This will lead to better decision making, improved responses to the market after a catastrophe, and improved internal procedures for TDI. This will also assist TDI in swiftly compiling complex data; allow for more timely analysis by TDI; and provide information about the impact of catastrophe events to policymakers.

It is not feasible for TDI to determine the actual cost of employees needed to comply with the proposed rule considering that each insurer occupies a different market share and will only provide data to the extent its business is affected by the identified catastrophe in the specified regions. Further, every insurer has unique internal processes, resources, and technical capabilities that are not feasible for TDI to evaluate. The method of compliance is a business decision, including the decision to employ staff or contract for some of these services.

Though costs to each insurer will depend heavily on the method of compliance the insurer chooses, TDI projects the following possible requirements. These estimates are conservative (high) so costs may be less than what is estimated here.

TDI estimates individual employee compensation for an administrative assistant at $17.61 an hour, computer operator at $22.04 an hour, and a computer and information systems manager at $68.53 an hour for one to twenty hours of work to revise an insurer's internal procedures. TDI also estimates individual employee compensation for an administrative assistant at $17.61 an hour and a computer operator at $22.04 an hour for one to twenty hours of work to gather and submit the data. These wages are based on the national median hourly wage for each classification as reported in the May 2018 National Industry-Specific Occupational Employment and Wage Estimates at: www.bls.gov/oes/current/oes436014.htm; www.bls.gov/oes/current/oes113021.htm; and www.bls.gov/oes/current/oes439011.htm.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The primary objectives of this proposal are to gather essential data to determine the insurance market's health after a catastrophe and to implement a streamlined, standardized process to reduce costs over time and increase reporting efficiency.

To implement this rule, TDI has determined that the proposed rule may have an adverse economic effect or a disproportionate economic impact on one to 100 small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The new statistical plan will only apply to insurers meeting a monetary threshold of at least $5 million in Texas written premium. Therefore, TDI estimates that the proposed rule will only affect a minimal number of small or micro businesses, if any. TDI considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives:

(1) not proposing the proposed rule and instead collecting the needed data through one-time data calls;

(2) proposing a different requirement for small and micro businesses; and

(3) exempting small or micro businesses from the proposed requirement that could create the adverse impact.

TDI examined each of these alternatives and explains them below:

Not proposing the proposed rule. Not adopting the proposed rule would result in continuing the data-call approach. There would be no streamlined, anticipated process for collecting this important data for any insurer, regardless of size. This would mean no cost-savings result over time due to increased efficiency, and no statistical plan to ensure consistent data is collected that would allow an examination of experience comparisons over time. For these reasons, this option has been rejected.

Proposing a different requirement for small and micro businesses. Proposing a different requirement for small and micro businesses would not alleviate the adverse economic impact from compliance with this proposal because small and micro

businesses would still be required to report data in response to a catastrophe data call issued by TDI. For these reasons, this option has been rejected.

Exempting small and micro businesses from the proposed requirement that could create the adverse impact. If small and micro businesses were exempted from the new proposed rule that would not alleviate the adverse economic impact from compliance with this proposal because small and micro businesses would still be required to report data in response to a catastrophe data request issued by TDI. In addition, there would be no streamlined, anticipated process for small and micro businesses for collecting this important data. This would mean no cost-savings result over time due to increased efficiency. For these reasons, this option has been rejected.

TDI has determined that the proposal will not have an adverse economic effect on rural communities because the statistical plan will only apply to insurers meeting a monetary threshold of at least $5 million in Texas written premium. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for TDI to address rural communities in its regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the rule is being adopted in response to past natural disasters and anticipation of future natural disasters.

After issuing individual, separate data calls for past natural disasters, TDI determined that a new process was required to collect data concerning the financial health of the insurance market after a natural disaster--it needed a more efficient, standardized way to assess the financial health of the market. Because time is critical when responding to a catastrophe, spending extra time and resources drafting and issuing unique, incident-specific data calls, and sorting through variously formatted and delivered responses, inhibits TDI's ability to collect and analyze catastrophe statistical data efficiently. In addition, requiring insurers to respond to unique, incident-specific data calls diverts insurers' time and resources during a catastrophe. Therefore, this rule is being adopted in response to TDI's experience after past natural disasters and in response to future anticipated natural disasters.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed rule is in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation to implement the new statistical plan;

- will not expand, limit, or repeal an existing regulation;

- will increase the number of individuals subject to the rule's applicability, as this is a new rule; and

- will positively affect the Texas economy as it will provide important, cost-effective information to TDI to assess the insurance market's health after a catastrophe.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 9, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes 28 TAC §5.9502 under Insurance Code §§38.001, 38.202, 38.204 - 38.207, and 36.001.

Insurance Code §38.001 authorizes TDI to address a reasonable inquiry to any insurance company or other holder of an authorization, such as a surplus lines or farm mutual insurer, relating to the business condition or any matter TDI considers necessary for the public good or for the proper discharge of TDI's duties. This section also specifies that a response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Insurance Code §38.202 allows the Commissioner to designate a statistical agent to gather data for relevant regulatory purposes or as otherwise provided by the Insurance Code.

Insurance Code §38.204 requires a designated statistical agent to collect data from reporting insurers and authorizes the Commissioner to adopt a statistical plan adopted by the Commissioner.

Insurance Code §38.205 provides that insurers must provide all premium and loss cost data to the Commissioner or designated statistical agent.

Insurance Code §38.206 authorizes the statistical agent to collect from reporting insurers any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurer.

Insurance Code §38.207 authorizes the Commissioner to adopt rules necessary to accomplish the purposes of Insurance Code Chapter 38, Subchapter E.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.9502 implements Insurance Code Chapter 38, Subchapter E, codified by SB 1467, 76th Legislature, Regular Session (1999).

§5.9502. Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks.

(a) Purpose and applicability.

(1) The purpose of this section is to establish requirements for the reporting of catastrophe-related data by insurers under Insurance Code Chapter 38, Subchapter E and Insurance Code §38.001.

(2) This section applies to all reports required to be filed under the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks for reporting periods beginning on or after January 1, 2020. Insurers must report their claim and loss experience after each specified catastrophe event. Insurers are not required to report data under the statistical plan until TDI has activated the statistical plan for a specific event and requested information under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov.

(b) Data reporting notice. TDI will notify insurers, including surplus lines and farm mutual insurers, of data reporting under the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks by posting a data request under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov.

(c) Response requirements. A response must comply with the reporting requirements and instructions specified in the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks adopted by reference in subsection (e) of this section.

(d) Confidential information. Under Insurance Code §38.001(d), a response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. Insurers should identify what documents are privileged or confidential in their responses.

(e) Adoption by reference. The Commissioner adopts by reference the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks. This document is published by TDI and is available on TDI's website at www.tdi.texas.gov.

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 October 28, 2019.

TRD-201903992
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6584

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Texas Department of Insurance proposes amendments to 28 TAC §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. Under Insurance Code §843.156, the term "insurance company" as used in this proposal includes a health maintenance organization (HMO) as defined in Insurance Code §843.002.

EXPLANATION. The proposed amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2020 calendar year. The proposed amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the 2019 calendar year, and from each foreign insurer examined during the 2019 calendar year using the same methodology.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment will be applicable. The department also proposes amendments in subsections (b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsection (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2020.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2020.

In general, the department's 2020 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2019.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1353 (House Bill 1), Acts of the 86th Legislature, Regular Session, (2019) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the Commissioner of Insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2020 fiscal year until the next assessment collection period in 2020. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2020 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2019 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2019 to determine the proposed rate of assessment for admitted assets.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Robert Palm, program specialist for Financial Services, has determined that for each year of the first five years the proposed amendments will be in effect, the expected fiscal impact on state government is estimated income of $9,481,212 to the Texas Department of Insurance Examination Self-Directed Account in the Texas Treasury Safekeeping Trust Company. There will be no fiscal implications for local government as a result of enforcing or administering the section, because local governments are not involved in enforcing or complying with the proposed amendments, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT AND COST NOTE. Mr. Palm also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the section will be adequate and reasonable assessment of rates to defray the state's expenses of domestic and foreign insurer examinations and administration of the laws related to these examinations during the 2020 calendar year. Mr. Palm has determined that the direct economic cost to entities required to comply with the proposed amendments will vary.

The examination expense will consist of the actual salary of the examiner directly attributable to the examination and the actual expenses of the examiner directly attributable to the examination, including transportation, lodging, meals, subsistence expenses, and parking fees. The actual salary of an examiner is to be determined by dividing the annual salary of the examiner by the total number of working days in a year, and a company or group is to be assessed the part of the annual salary attributable to each working day the examiner examines the company or group.

The amount of the assessment in 2020 for every domestic insurer and those foreign insurers examined in 2019 will be .00141 of 1 percent of the company's admitted assets as of December 31, 2019, excluding pension assets specified in subsection (c)(2)(A), and .00441 of 1 percent of the company's gross premium receipts for 2019, excluding pension related premiums specified in subsection (c)(2)(B), and premiums related to welfare benefits described in subsection (c)(6).

There are two components of costs for entities required to comply with the assessment requirements in the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the assessment. Typically, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. The compensation is generally between $26 and $44 an hour. The department estimates that the required form can be completed in two hours. The requirement to pay the assessment necessary to cover the expenses of company examination is the result of legislative enactment and is not a result of the adoption or enforcement of this proposal. For those domestic and foreign companies with an overhead assessment of less than $25 as computed under §7.1001(c)(2)(A) and (B), a minimum overhead assessment of $25 will be assessed.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 44 domestic insurance companies that are small or micro businesses required to comply with the proposed rules. It is not possible to anticipate the number or size of foreign insurance companies that may be required to comply with the proposed rule, because of the limited number of examinations the department conducts on foreign insurance companies. The department has determined that none of the workers' compensation self-insurance groups that must comply with the proposed rule would qualify as a small or micro business.

Adverse economic impact may result from costs associated with examination fees and the amount of the required assessment resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit or cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent on the size of the business, but rather is dependent on: for workers' compensation self-insurance groups, the length of time it takes to conduct an examination, the annual salary of the examiner, and expenses associated with the examination; and for domestic and foreign insurers, the length of time it takes to conduct an examination, expenses associated with the examination, and the admitted assets and gross premium receipts of the company.

In accordance with Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to propose a rule addressing examination fees and assessments for domestic and foreign insurance companies and workers' compensation self-insurance groups.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting a different assessment requirement for small and micro businesses, and (iii) exempting small or micro businesses from the assessment requirements.

Not adopting the proposed rule. Without adopting the proposed rule the department would be unable to collect the necessary funds to cover the examination functions of the department. The purpose of conducting examinations is to monitor the activities and solvency of insurance companies. Failure by the department to perform its examination functions could result in public harm if a company does not comply with the Insurance Code or becomes insolvent and this is not detected because of the lack of regular examinations. Not adopting the rule would also result in the department being out of compliance with Insurance Code §401.151(c) and §401.152(a-1), which direct the department to impose an annual assessment on domestic and foreign insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the insurer examination laws of Texas. This option has been rejected.

Adopting a different assessment requirement for small and micro businesses. The proposed assessment is already based on the most equitable methodology the department can develop. The department applies an assessment methodology that results in a smaller assessment, down to a minimum assessment of $25, for domestic and foreign insurer small or micro businesses because the assessment is determined based on premium levels and admitted assets. The department anticipates that a domestic or foreign insurer that is a small or micro business most susceptible to economic harm would be one that writes fewer premiums and has fewer admitted assets. However, based on the proposed assessment requirements of the rule, that small or micro business would pay a smaller assessment, reducing its risk of economic harm. This option has been rejected.

Exempting small or micro businesses from the assessment requirements. As previously noted, the current methodology used to develop the proposed rule is already the most equitable that the department can develop. The department applies a methodology that contemplates a domestic or foreign insurer that is a small or micro business paying less of an assessment if it writes fewer premiums or has less admitted assets. However, if the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. This option has been rejected.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

The department has determined that the proposal will not have an adverse economic effect on rural communities because examinations are not conducted on rural communities and rural communities do not pay assessments to cover examination expenses. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address rural communities in its regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that the proposed amendments do impose a possible cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; and 843.156(h); and Labor Code §407A.252(b), direct the department to levy assessments on domestic and foreign insurers to cover examination expenses and the proposed amendments are necessary to comply with this requirement.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the proposed rule or its implementation:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will require increases in fees paid to the agency;

- will not create new regulation;

- will not expand, limit, or repeal existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m. Central time on December 9, 2019, by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 112-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Separately, submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 112-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amended section is proposed under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the Commissioner admin-

isters money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority must pay the expenses of the examination in an amount the Commissioner certifies as just and reasonable. Insurance Code §401.151 also provides that the department collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that in determining the amount of assessment, the department consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas must reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152(a-1) requires that the department also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by the section in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers, and the amount imposed must be computed in the same manner as the amount imposed under §401.151(c) for domestic insurers. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the Commissioner. Additionally, §401.152 provides that the Commissioner determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the Commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

Labor Code §407A.252(b) provides that the Commissioner of Insurance may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

CROSS-REFERENCE TO STATUTE. Amendments in this proposal to §7.1001 affect Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; and 843.156(h); and Labor Code §407A.252(b).

§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance, 2020 [~~2019~~].

(a) Under Insurance Code §843.156 and for purposes of this section, the term "insurance company" includes a health maintenance organization as defined in Insurance Code §843.002.

(b) An insurer not organized under the laws of Texas (foreign insurance company) must pay the costs of an examination as specified in this subsection.

(1) Under Insurance Code §401.152, a foreign insurance company must reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the company the part of the annual salary attributable to each working day the examiner examines the company during 2020 [~~2019~~]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(2) Under Insurance Code §401.152(a-1), a foreign insurance company examined in 2019 [~~2018~~] entirely, or an exam beginning in 2019 [~~2018~~] and completed in 2020 [~~2019~~], must pay an annual assessment in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers. The amount imposed must be computed in the same manner as the amount imposed for domestic insurers as applicable under subsection (c) of this section.

(3) A foreign insurance company must pay the reimbursements and payments required by this subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

(c) Under Insurance Code §401.151, §401.155, and Chapter 803, a domestic insurance company must pay examination expenses and rates of overhead assessment in accordance with this subsection.

(1) A domestic insurance company must pay the actual salaries and expenses of the examiners allocable to an examination of the company. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2020 [~~2019~~]. The expenses assessed must be those actually incurred by the examiner to the extent permitted by law.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the overhead assessment to cover administrative departmental expenses attributable to examination of companies is:

(A) .00141 [~~.00173~~] of 1 percent of the admitted assets of the company as of December 31, 2019 [~~2018~~], taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)); and

(B) .00441 [~~.00580~~] of 1 percent of the gross premium receipts of the company for the year 2019 [~~2018~~], taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)).

(3) Except as provided in paragraph (4) of this subsection, if a company was a domestic insurance company for less than a full year during calendar year 2019 [~~2018~~] because of a redomestication, the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of this subsection divided by 365 and multiplied by the number of days the company was a domestic insurance company during calendar year 2019 [~~2018~~].

(4) If the overhead assessment required under paragraph (2)(A) and (B) of this subsection or paragraph (3) of this subsection produces an overhead assessment of less than $25, a domestic insurance company must pay a minimum overhead assessment of $25.

(5) The department will base the overhead assessments on the assets and premium receipts reported in the annual statements.

(6) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §§301 et seq.).

(d) Under Labor Code §407A.252, a workers' compensation self-insurance group must pay the actual salaries and expenses of the examiners allocable to an examination of the group. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the group the part of the annual salary attributable to each working day the examiner examines the company during 2020 [~~2019~~]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(e) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance as provided in the invoice [~~at the address provided on the invoice~~] not later than 30 days from the invoice date.

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 October 28, 2019.

TRD-201903989
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6584

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SUBCHAPTER P. ADMINISTRATORS

28 TAC §7.1603

The Texas Department of Insurance proposes to amend 28 TAC §7.1603, relating to the requirements for administrators. Amendments to §7.1603 implement Senate Bill 1200, 86th Legislature, Regular Session (2019), which amended Occupations Code §55.0041.

EXPLANATION. SB 1200 amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI's licensing rules, which necessitates revisions to 28 TAC §§7.1603, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals.

Section 7.1603(a). Section 7.1603(a) requires any person acting or holding himself or herself out as an administrator to obtain a certificate authority, as required by Insurance Code Chapter 4151, unless the person meets an exemption described in Insurance Code §§4151.002, 4151.0021, or 4151.004. Proposed amendments to §7.1603(a) clarify that certain military spouses can engage as administrators by applying for a temporary certificate of authority.

Section 7.1603(c). New §7.1603(c) establishes an eligibility requirement that military spouses must be licensed in a jurisdiction with substantially equivalent licensing requirement as those described in §7.1604 and in Insurance Code Chapter 4151. Proposed new §7.1603(c) provides that a military spouse licensed in a jurisdiction outside of Texas will only be authorized to engage as an administrator in Texas for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years from the date the spouse receives the confirmation described by §7.1603(d).

Section 7.1603(d). New §7.1603(d) details the criteria that must be met for a military spouse to engage as an administrator. This section will require the military spouse to submit an application notifying TDI of the military spouse's intent to practice in this state, submit to TDI proof of the spouse's residency in Texas, a copy of the spouse's military identification card, and evidence of good standing in the jurisdiction with substantially equivalent requirements. Proposed new §7.1603(d) will also require the military spouse to receive confirmation from TDI that indicates TDI has verified the spouse's license and that the spouse is authorized to engage in the business or occupation in accordance with this section.

Section 7.1603(e). New §7.1603(e) clarifies that no fees will be assessed in connection with the administrator license.

Section 7.1603(f). New §7.1603(f) clarifies that a military spouse engaged as an administrator under this authority is bound by all laws and rules applicable to the business and occupation in Texas.

The proposed new subsections and amendment also include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Chris Herrick, deputy commissioner of the Office of Customer Operations, has determined that during each year of the first five years the proposed new subsections and amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering this section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Herrick does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Herrick, expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Occupations Code §55.0041.

Mr. Herrick expects that the proposed amendments will not increase the cost of compliance with Occupations Code §55.0041 because they do not impose requirements beyond those in the statute. Occupations Code §55.0041 requires TDI to implement rules that execute the statute. Any costs that result from this implementation come from the statute itself. As a result, the cost associated with the rule do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. TDI does not anticipate a significant increase in applications that would qualify for this exemption. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons, and no additional rule amendments are required under Government Code §2001.0045 because the proposed §7.1603 is necessary to implement legislation. The proposed rule implements Occupations Code §55.0041, as added by SB 1200 86th Legislature, Regular Session (2019).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m. Central time on December 9, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §7.1603 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule-making authority to applicable state agencies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 7.1603 implements Occupations Code §55.0041, enacted by SB 1200, 86th Legislature, Regular Session, (2019).

§7.1603. Certificate of Authority Required.

(a) Unless a person meets an exemption under [~~the~~] Insurance Code §§4151.002, 4151.0021, or 4151.004, a person acting as or holding themselves [~~itself~~] out as an administrator must hold a certificate of authority under [~~the~~] Insurance Code Chapter 4151. A military spouse who meets the criteria described in subsection (c) of this section is eligible to apply for a temporary certificate of authority.

(b) An administrator contractor and an administrator subcontractor must hold a certificate of authority under [~~the~~] Insurance Code Chapter 4151.

(c) A military spouse who is licensed as an administrator in a state with substantially equivalent requirements as those found in §7.1604 of this title (relating to Application for Certificate of Author-

ity) and Insurance Code Chapter 4151 may engage as an administrator while the military service member to whom the military spouse is married is stationed at a military installation in this state for a period of three years from the date the spouse receives the confirmation described by subsection (d) of this section.

(d) A military spouse seeking to engage as an administrator must:

(1) submit an application notifying TDI of the military spouse's intent to engage as an administrator in Texas;

(2) submit to TDI proof of the spouse's residency in Texas and a copy of the spouse's military identification card; and

(3) show evidence of good standing from a jurisdiction with substantially equivalent requirements as those found in §7.1604 of this title and Insurance Code Chapter 4151.

(e) Notwithstanding §7.1604 of this title, a military spouse seeking to engage as an administrator will not be assessed any application fees under that section.

(f) A military spouse authorized to engage as an administrator must comply and adhere to all other laws and rules applicable to administrators.

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 October 25, 2019.

TRD-201903978
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6548

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CHAPTER 15. SURPLUS LINES INSURANCE
SUBCHAPTER B. SURPLUS LINES AGENTS

28 TAC §15.101

The Texas Department of Insurance proposes to amend 28 TAC §15.101, relating to requirements for surplus lines agents. Amendments to §15.101 implement Senate Bill 1200, 86th Legislature, Regular Session (2019), which amended Occupations Code §55.0041.

EXPLANATION. SB 1200 amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI licensing rules, which necessitates revisions to 28 TAC §15.101, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals.

Section 15.101. Amending § 15.101 is necessary to implement SB 1200 and Occupations Code § 55.0041. Currently, §15.101 requires all applicants for a surplus lines agent license to file an application with TDI. TDI proposes to amend the section by adding new subsection (g), which allows for a quicker application process for military spouses who are licensed in a jurisdiction with substantially equivalent requirements to those in Texas.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Chris Herrick, deputy commissioner of the Office of Customer Operations has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Mr. Herrick does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Herrick, expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Occupations Code §55.0041.

Mr. Herrick expects that the proposed amendments will not increase the cost of compliance with Occupations Code §55.0041 because they do not impose requirements beyond those in the statute. Occupations Code §55.0041 requires TDI to implement rules that execute the statute. Any costs that result from this implementation result from the statute. The costs associated with the rule do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. TDI does not anticipate a significant increase in applications that would qualify for this exemption. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons, and no additional rule amendments are required under Government Code §2001.0045 because the proposed §15.101 is necessary to implement legislation. The proposed rule implements Occupations Code §55.0041, as added by SB 1200 Legislature, 86th Legislature (2019).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 9, 2019. TDI. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m. Central time on December 9, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §15.101 under Insurance Code §36.001 and Occupations Code §55.0041.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

CROSS-REFERENCE TO STATUTE. Section 15.101 implements Occupations Code §55.0041, enacted by SB 1200, 86th Legislature, Regular Session (2019).

§15.101. Licensing of Surplus Lines Agents.

(a) Persons performing any of the following surplus lines insurance activities are required to have a surplus lines agent license:

(1) supervising unlicensed staff engaged in activities described in subsection (b) of this section, although unlicensed intermediary supervisors may supervise unlicensed staff engaging in these activities if the ultimate supervisor is licensed;

(2) negotiating, soliciting, effecting, procuring, or binding surplus lines insurance contracts for clients or offering advice, counsel, opinions, or explanations of surplus lines insurance products to agents or clients beyond the scope of underwriting policies or contracts, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction; or

(3) receiving any direct commission or variance in compensation based on the volume of surplus lines premiums taken and received from, or as a result of, another person selling, soliciting, binding, effecting, or procuring surplus lines insurance policies, contracts, or coverages, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction.

(b) The following activities, if supervised by a surplus lines agent, do not require a surplus lines agent license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts, or coverages, and the employee's compensation is not varied by the volume of premiums taken and received:

(1) full-time clerical and administrative services, including, but not limited to, the incidental taking of information from clients; receipt of premiums in the office of a licensed agent; or transmitting to clients, as directed by a licensed surplus lines agent, prepared marketing materials or other prepared information and materials including, without limitation, invoices and evidences of coverage;

(2) contacting clients to obtain or confirm information necessary to process an application for surplus lines insurance so long as the contact does not involve any activities for which a license would be required under subsection (a)(2) of this section;

(3) performing the task of underwriting any insurance policy, contract, or coverage, including and without limitation, pricing of the policy or contract; or

(4) contacting clients, insureds, agents, other persons, and insurers to gather and transmit information regarding claims and losses under the policy to the extent the contact does not require a licensed adjuster as set forth under Insurance Code Chapter 4101.

(c) This section must not be construed to prohibit distribution of agency profits to unlicensed persons, including shareholders, partners, and employees.

(d) Before TDI issues a surplus lines agent license, the applicant must submit the following:

(1) an appropriate, fully completed written application; and

(2) the fee specified by §19.801 and §19.802 of this title (relating to General Provisions and Amount of Fees, respectively).

(e) Texas-resident applicants, and nonresident applicants who do not hold a surplus lines license in their state of residence or whose state of residence does not license Texas residents on a reciprocal basis as determined by TDI, must meet all licensing requirements set forth in Insurance Code Chapter 981. Nonresident applicants under this section must also comply with Insurance Code §4056.051.

(f) Nonresident applicants who hold a surplus lines agent license in good standing in the agent's state of residence and meet the requirements of Insurance Code §4056.052 must meet all the licensing requirements of Insurance Code Chapter 981 to the extent that the requirements are not waived by the Commissioner under Insurance Code §4056.055.

(g) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives the confirmation described by paragraph (1) of this subsection.

(1) The military spouse must:

(A) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;

(B) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and

(C) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

(2) Notwithstanding subsection (d)(1) of this section and §19.801 and §19.802 of this title, A military spouse will not be assessed any application fees under those sections.

(h) [(g)] Notwithstanding any other subsection of this section, nonresident applicants are not required to obtain a general property and casualty agent license if they meet the requirements of Insurance Code §981.203(a-1).

(i) [(h)] Each surplus lines agent license issued to an agent will be valid for a term as established under Insurance Code §4003.001 and Chapter 19, Subchapter I of this title (relating to General Provisions Regarding Fees, Applications, and Renewals). The license may be renewed by submitting a renewal application and a nonrefundable license fee as specified by §19.801 and §19.802 of this title.

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 October 25, 2019.

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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6584

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CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS
SUBCHAPTER I. GENERAL PROVISIONS REGARDING FEES, APPLICATIONS, AND RENEWALS

28 TAC §19.803

The Texas Department of Insurance proposes to amend 28 TAC §19.803, concerning licensing requirements for insurance professionals. Amendments to §19.803 implement Senate Bill 1200, 86th Legislature, Regular Session (2019), and Occupations Code §55.0041.

EXPLANATION. SB 1200 amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI licensing rules, which necessitates revisions to 28 TAC §19.803, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals.

Section 19.803. The proposed amendments to §19.803 add new subsection (g) to the section, which allows for a quicker application process for military spouses who are licensed in a jurisdiction with substantially equivalent requirements to those in Texas.

In addition, the proposal includes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Chris Herrick, deputy commissioner of the Office of Customer Operations has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Mr. Herrick does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Herrick, expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Occupations Code §55.0041.

Mr. Herrick expects that the proposed amendments will not increase the cost of compliance with Occupations Code §55.0041 because they do not impose requirements beyond those in the statute. Occupations Code §55.0041 requires TDI to implement rules that execute the statute. Any costs that result from this implementation result from the statute itself. The costs associated with the rule do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. TDI does not anticipate a significant increase in applications that would qualify for this exemption. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons, and no additional rule amendments are required under Government Code §2001.0045 because the proposed §19.803 is necessary to implement legislation. The proposed rule implements Occupations Code §55.0041, as added by SB 1200 Legislature, 86th Legislature, Regular Session (2019).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendment is in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government

action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m. Central time on December 9, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §19.803 under Insurance Code §36.001 and Occupations Code §55.0041.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

CROSS-REFERENCE TO STATUTE. Section 19.803 implements Occupations Code §55.0041, enacted by SB 1200, 86th Legislature, Regular Session (2019).

§19.803. Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions. The definitions for terms defined in Occupations Code §55.001 are applicable to this section, including the terms "military service member," "military veteran," and "military spouse."

(b) Conflict. To the extent that provisions in this section conflict with provisions in any other section in this chapter, this section controls.

(c) License renewal extension and fee exemption. As specified in Occupations Code §55.003, a military service member who holds a license is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's license as follows:

(1) A military service member who fails to renew a license in a timely manner because the individual was serving as a military service member must submit to TDI:

(A) the licensee's name, address, and license number;

(B) the licensee's military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal, including continuing education.

(2) A military service member specified in paragraph (1) of this subsection is exempt from additional fees required under §19.810 of this title as required in Occupations Code §55.002.

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years to complete the continuing education and submit a renewal as specified in Occupations Code §55.003.

(4) A military service member specified in paragraph (1) of this subsection must satisfy the continuing education requirement that has been extended before [~~prior to~~] satisfying the continuing education requirement for any other period.

(d) Alternative and nonresident reciprocal licensing. As specified in Occupations Code §55.009:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member or military veteran[~~, or military spouse~~] who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license is not required to pay any applicable application fee or examination fee that is paid to TDI. This exemption does not apply to license renewal application fees. To qualify for this exemption the applicant must submit as applicable:

(A) the required original license application, with a request for waiver of the application fee and examination fee paid to TDI;

(B) identification indicating that the applicant is a military service member; military veteran; or military dependent, if a military spouse;

(C) marriage certificate or documentation, if a military spouse and marriage is not otherwise documented in the documentation provided under paragraph (2) of this subsection; and

(D) documentation that the applicant's military service, training, or education substantially meets all [~~of~~] the requirements for the license.

(e) Alternative licensing requirements. For the purpose of Occupations Code §55.004, an applicant for a license who is a military service member or military veteran [~~or military spouse~~] may complete the following alternative procedures for licensing.

(1) Requirements for licensing by reciprocity. A nonresident license applicant may apply for a nonresident license subject to the qualifications and as provided in subsection (c) of this section.

(2) Requirements for an applicant whose Texas resident license has expired for more than one year. A license applicant whose Texas resident license has expired for more than one year but less than five years preceding the application date may request that TDI waive the examination requirement. An applicant requesting this waiver must submit to TDI:

(A) the required original license application;

(B) identification indicating that the applicant is a military service member; military veteran; or military dependent, if a military spouse;

(C) a marriage certificate or documentation, if a military spouse and marriage is not otherwise documented in the documentation provided under subparagraph (B) of this subsection;

(D) evidence that the applicant has completed all required continuing education for the periods the applicant was licensed, and paid all required fines, as required under §19.810 of this title; and

(E) a request for waiver demonstrating the applicant's credentials that justify waiver of the licensing examination.

(f) Service in a combat theater. A military service member serving in a combat theater, as provided for in Insurance Code §36.109,

may apply to TDI for an exemption from or an extension of time for meeting the continuing education requirements or extending their license renewal. The licensee must request the exemption or extension before [~~prior to~~] the end of the reporting period for which it applies and must include:

(1) a copy of the order to active duty status, service in a combat theater, or other positive documentation of military service that will prevent the licensee from compliance;

(2) a clear request for either an extension or exemption, or both;

(3) the expected duration of the assignment; and

(4) any other information the licensee believes may assist TDI or that TDI requests, on a case by case basis.

(g) Military Spouses. Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives the confirmation described by paragraph (1) of this subsection.

(1) The military spouse must:

(A) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;

(B) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and

(C) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

(2) Notwithstanding any other section in this title, a military spouse submitting an application under this section is not required to pay an application fee to TDI.

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 October 25, 2019.

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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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CHAPTER 25. INSURANCE PREMIUM FINANCE
SUBCHAPTER B. LICENSING AND REGULATION

28 TAC §25.24

The Texas Department of Insurance proposes to amend 28 TAC §25.24, concerning requirements for premium finance companies. Amendments to §25.24 implement Senate Bill 1200, 86th Legislature, Regular Session (2019), which amended Occupations Code §55.0041.

EXPLANATION. SB 1200 amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI licensing rules, which necessitates revisions to 28 TAC §25.24, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals.

Section 25.24. Currently, §25.24(a) requires all applicants for an insurance premium finance company license to file an application with TDI. The amendment adds subsection (b) to this section, which allows a less stringent application process for military spouses who are licensed in a jurisdiction with substantially equivalent requirements to those in Texas.

In addition, the proposal includes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Chris Herrick, deputy commissioner of the Office of Customer Operations, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Mr. Herrick does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Herrick expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Occupations Code §55.0041.

Mr. Herrick expects that the proposed amendments will not increase the cost of compliance with Occupations Code §55.0041 because they do not impose requirements beyond those in the statute. Occupations Code §55.0041 requires TDI to implement rules that execute statute. Any costs that result from this implementation are the result of the statute. The costs associated with the rule do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses or on rural communities. TDI does not anticipate a significant increase in applications that would qualify for this exemption. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons, and no additional rule amendments are required under Government Code §2001.0045 because the proposed amendment to §25.24 is necessary to implement legislation. The proposal implements Occupations Code §55.0041, as added by SB 1200 Legislature, 86th Legislature, Regular Session (2019).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendment is in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m. central time on December 9, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §25.24 under Insurance Code §36.001 and Occupations Code §55.0041.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

CROSS-REFERENCE TO STATUTE. Section 25.24 implements Occupations Code §55.0041, enacted by SB 1200, 86th Legislature, Regular Session (2019).

§25.24. License Application.

(a) An applicant for an insurance premium finance company license must [~~shall~~] file an application Form PF1 with TDI [~~the Department~~]. The application must [~~shall~~] include the following as applicable:

(1) List of Principals (Form PF2);

(2) Premium Finance Application Questionnaire (Form PF3);

(3) Biographical Affidavit (Form PF4) for each individual named on Form PF2;

(4) General statement of experience giving applicant's qualifications;

(5) List of Other States of Licensure (Form PF5);

(6) Appointment of Statutory Agent and Consent to Service (Form PF6);

(7) Sworn financial statement;

(8) Sample Business Operation forms;

(9) $400 Investigation Fee;

(10) Partnership agreement;

(11) Certified copy of Assumed Name Certificate as on file with the County Clerk or [~~Clerk(s) and/or~~] Secretary of State;

(12) Originally certified copy of Articles of Incorporation from the Office of the Secretary of State or equivalent office in another state;

(13) Certified copy of Bylaws;

(14) Certified copy of Minutes;

(15) Current Franchise Tax Certificate of Good Standing or letter of exemption issued by the Texas Comptroller of Public Accounts; and

(16) Certified copy of Certificate of Authority issued by the Texas Secretary of State (foreign corporations only).

(b) Except as provided by subsection (d) of this section, on [~~Upon~~] notification by TDI [~~the Department~~] of approval of the application, the applicant must [~~shall~~] submit a license fee as follows [~~as indicated in paragraphs (1) and (2) of this subsection~~]:

(1) Licenses issued January 1 through June 30--$200;

(2) Licenses issued July 1 through December 31--$100.

(c) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives confirmation from the Texas Department of Insurance of receipt of the items described by this subsection. The military spouse must:

(1) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;

(2) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and

(3) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

(d) A military spouse will not be assessed any application fees under this section.

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

Filed with the Office of the Secretary of State on October 25, 2019.

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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance proposes to amend 28 TAC §§34.524, 34.631, 34.726, and 34.833, relating to licensing requirements for military spouses. Amendments to these sections implement Senate Bill 1200, 86th Legislature, Regular Session (2019), which amended Occupations Code §55.0041.

EXPLANATION. SB 1200 amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI's licensing rules, which necessitates revisions to 28 TAC §§34.524, 34.631, 34.726, and 34.833, as well as changes in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals.

Section 34.524. Currently, §34.524 allows for an exemption from licensure requirements and sets forth requirements for military service members, military veterans, or military spouses. Occupations Code §55.0041, as amended by SB 1200, clarifies that a military spouse may act under this provisional license for up to three years. New §34.524(e) addresses the new requirements for military spouses imposed by §55.0041.

Section 34.631. Currently, §34.631 allows for an exemption from licensure requirements for military service members, military veterans, or military spouses and sets forth requirements for a provisional license. Occupations Code §55.0041, as amended by SB 1200, clarifies that a military spouse may act under this provisional for license up to three years. New §34.631(e) addresses the requirements for military spouses imposed by §55.0041.

Section 34.726. Currently, §34.726 allows for an exemption from licensure requirements for military service members, military veterans, or military spouses and sets forth requirements for a provisional license. Occupations Code §55.0041, as amended by SB 1200, clarifies that a military spouse may only act under this provisional for license up to three years. New §34.726(e) addresses the requirements for military spouses imposed by §55.0041.

Section 34.833. Currently, §34.833 allows for an exemption from licensure requirements for military service members, military veterans, or military spouses and sets forth requirements for a provisional license. Occupations Code §55.0041, as amended by SB 1200, clarifies that a military spouse may only act under this provisional for license up to three years. New §34.833(a)(3) addresses the requirements for military spouses imposed by §55.0041.

In addition, the proposed amendments include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Chris Herrick, deputy commissioner of the Office of Customer Operations has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Herrick does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Herrick expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Occupations Code §55.0041.

Mr. Herrick expects that the proposed amendments will not increase the cost of compliance with §55.0041 because they do not impose requirements beyond those in the statute. Occupations Code §55.0041 requires TDI to implement rules that execute the statute. Any costs that result from this implementation come from the statute itself. As a result, the cost associated with the rule do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. TDI does not anticipate a significant increase in applications that would qualify for this exemption. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons, and no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §§34.524, 34.631, 34.726, and 34.833 are necessary to implement legislation. The proposed rule implements Occupations Code §55.0041, as added by SB 1200 Legislature, 86th Legislature, 2019.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and

that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., Central time, on December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m. Central time on December 9, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §34.524

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §34.524 under Insurance Code §36.001 and Occupations Code §55.0041.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule-making authority to applicable state agencies.

CROSS-REFERENCE TO STATUTE. Section 34.524 implements Occupations Code §55.0041, amended by SB 1200, 86th Legislature, Regular Session (2019).

§34.524. Military Service Members, Military Veterans, or Military Spouses.

(a) Waiver of licensed application and examination fees. TDI [~~The department~~] will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all [~~of~~] the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation will be credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years' additional time to complete any continuing education requirements and any other requirements related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member or military veteran who[~~, military veteran, military veteran, or military spouse that~~]:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

(e) Alternative licensing for military spouses. A military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state is eligible for a license under this subsection for a period of three years. The military spouse must be married to a military service member that is stationed at a military installation in Texas. The three-year period begins from the date the spouse receives confirmation from TDI that the following elements have been fulfilled. In order for the military spouse to obtain a license under this subsection, the military spouse must:

(1) submit an application notifying TDI of the military spouse's intent to engage under the specific license in Texas;

(2) submit proof of the military spouse's residency in Texas and a copy of the military identification card; and

(3) submit evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

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 October 25, 2019.

TRD-201903979
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6584

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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §34.631

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §34.631 under Insurance Code §36.001 and Occupations Code §55.0041.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

CROSS-REFERENCE TO STATUTE. Section 34.631 implements Occupations Code §55.0041, amended by SB 1200, 86th Legislature, Regular Session (2019).

§34.631. Military Service Members, Military Veterans, or Military Spouses.

(a) Waiver of licensed application and examination fees. TDI [~~The department~~] will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all [~~of~~] the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation will be credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years' additional time to complete any continuing education requirements and any other requirements related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member or military veteran who[~~, military veteran, or military spouse that~~]:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

(e) Alternative licensing for military spouses. A military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state is eligible for a license under this subsection for a period of three years. The military spouse must be married to a military service member that is stationed at a military installation in Texas. The three-year period begins from the date the spouse receives confirmation from TDI that the following elements have been fulfilled. In order for the military spouse to obtain a license under this subsection, the military spouse must:

(1) submit an application notifying TDI of the military spouse's intent to engage under the specific license in Texas;

(2) submit proof of the military spouse's residency in Texas and a copy of the military identification card; and

(3) submit evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

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

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TRD-201903980
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6584

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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §34.726

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §34.726 under Insurance Code §36.001 and Occupations Code §55.0041.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

CROSS-REFERENCE TO STATUTE. Section 34.726implements Occupations Code §55.0041, amended by SB 1200, 86th Legislature, Regular Session (2019).

§34.726. Military Service Members, Military Veterans, or Military Spouses.

(a) Waiver of licensed application and examination fees. TDI [~~The department~~] will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all [~~of~~] the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation will be credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years' additional time to complete any continuing education requirements and any other requirements related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member or military veteran who[~~, military veteran, or military spouse that~~]:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

(e) Alternative licensing for military spouses. A military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state is eligible for a license under this subsection for a period of three years. The military spouse must be married to a military service member that is stationed at a military installation in Texas. The three-year period begins from the date the spouse receives confirmation from TDI that the following elements have been fulfilled. In order for the military spouse to obtain a license under this subsection, the military spouse must:

(1) submit an application notifying TDI of the military spouse's intent to engage under the specific license in Texas;

(2) submit proof of the military spouse's residency in Texas and a copy of the military identification card; and

(3) submit evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

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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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 676-6584

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SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §34.833

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §34.833 under Insurance Code §36.001 and Occupations Code §55.0041.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

CROSS-REFERENCE TO STATUTE. Section 34.833 implements Occupations Code §55.0041, amended by SB 1200, 86th Legislature, Regular Session (2019).

§34.833. Military Service Members, Military Veterans, or Military Spouses.

(a) Waiver of licensed application and examination fees. TDI [~~The department~~] will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all [~~of~~] the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation will be credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years' additional time to complete any continuing education requirements and any other requirements related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member or military veteran who[, ~~military veteran, or military spouse that~~]:

(1) holds a current license issues by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

(e) Alternative licensing for military spouses. A military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state is eligible for a license under this subsection for a period of three years. The military spouse must be married to a military service member that is stationed at a military installation in Texas. The three-year period begins from the date the spouse receives confirmation from TDI that the following elements have been fulfilled. In order for the military spouse to obtain a license under this subsection, the military spouse must:

(1) submit an application notifying TDI of the military spouse's intent to engage under the specific license in Texas;

(2) submit proof of the military spouse's residency in Texas and a copy of the military identification card; and

(3) submit evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

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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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 33. CONSOLIDATED PERMIT PROCESSING

SUBCHAPTER B. GENERAL PROVISIONS

30 TAC §33.25

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §33.25.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 35, 39, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 33.25 is proposed to be amended by updating a cross-reference.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§33.25, Correction of a Consolidated Permit

The commission proposes to amend §33.25 by updating the cross-reference from §50.45 to §50.145 (Corrections to Permits).

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference to a procedural rule regarding corrections to permits.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public notice and public participation in certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The proposed rule applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses necessary changes in order to update a cross-reference in a procedural rule.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that

statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §33.25 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §33.25 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §33.25 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 33.25 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapters J and M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amended section is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also

proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters J and M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§33.25. Correction of a Consolidated Permit.

A consolidated permit, or a component authorization of that permit, shall be corrected under §50.145 [~~§50.45~~] of this title (relating to Corrections to Permits).

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

Filed with the Office of the Secretary of State on October 25, 2019.

TRD-201903909
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend 30 TAC §35.13 and §35.25.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in 30 TAC Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 39, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Sections 35.13 and 33.25 are proposed to be amended by updating cross-references and removing obsolete text.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

§35.13, Eligibility of Executive Director

The commission proposes to amend §35.13 by updating the cross-reference from §50.41 to §50.141 (Eligibility of Executive Director).

§35.25, Notice and Opportunity for Hearing

The commission proposes to amend §33.25 by updating the cross-reference from §39.7 to §39.407 (Mailing Lists) and by updating the cross-reference from §39.13 to §39.413 (Mailed Notice).

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters, will update cross-references of rules related to public notice of certain types of permit applications and other types of actions.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public notice and public participation in certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. These changes will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect. This rulemaking addresses necessary changes in order to update cross-references and remove obsolete language in various procedural and permitting program rules.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §35.13 and §35.25 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments of §35.13 and §35.25 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in thestatutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Sections 35.13 and 35.25 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open

discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER B. AUTHORITY OF EXECUTIVE DIRECTOR

30 TAC §35.13

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapters L and M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amended section is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters L and M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§35.13. Eligibility of Executive Director.

Upon assumption of national pollutant discharge elimination system permit authority, the executive director, or the executive director's representative or representatives, may act under this chapter on Texas pollutant discharge elimination system (TPDES) permits or other TPDES-related approvals only if he or she meets the qualifications set out for the executive director in §50.141 [~~§50.41~~] of this title (relating to Eligibility of Executive Director).

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

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Robert Martinez
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For further information, please call: (512) 239-2678

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SUBCHAPTER C. GENERAL PROVISIONS

30 TAC §35.25

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapters L and M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amended section is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters L and M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§35.25. Notice and Opportunity for Hearing.

(a) An emergency order under this chapter may be issued with notice and an opportunity for hearing, or without notice and an opportunity for hearing, as provided by this chapter.

(b) If an emergency order is issued under this chapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the order to be held before the commission or its designee as soon as practicable after the order is issued.

(c) Except as otherwise provided by this chapter, notice of a hearing to affirm, modify, or set aside an emergency order under this chapter shall be given not later than the tenth day before the date set for the hearing. This notice shall provide that an affected person may request an evidentiary hearing on issuance of the emergency order.

(d) Temporary orders require a hearing before the issuance of the order. Notice of a hearing on a temporary order shall be given not later than the 20th day before the hearing on the order. This notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary order.

(e) In addition to the notice requirements provided elsewhere in these rules, notice shall be provided as follows.

(1) For water quality temporary orders, notice of a hearing that is held before issuance of the order shall be provided:

(A) by mail to persons requesting public notice of certain applications, in accordance with §39.407 [~~§39.7~~] of this title (relating to Mailing Lists) and to persons or agencies identified in §39.413 [~~§39.13~~] of this title (relating to Mailed Notice);

(B) by publication by the applicant in a newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county in which the facility is located or proposed to be located, the notice must be published in the newspaper of general circulation in the county in which the facility is located or proposed to be located. The applicant must file an affidavit with the chief clerk certifying facts that constitute compliance with the publication requirements. The deadline to file the affidavit is 15 days after publication of the notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice; and

(C) at least 20 days before the hearing.

(2) For water quality emergency orders, notice of the issuance of the order and the hearing to affirm, set aside, or modify if a hearing is held shall be provided in accordance with paragraph (1)(A) and (C) of this subsection.

(3) For nonhazardous underground injection control (UIC) emergency orders, notice shall be mailed and published at least 30 days before the hearing to affirm, modify, or set aside the emergency order, as is required by Chapter 39 of this title (relating to Public Notice) for notice of a hearing on an application for a UIC permit.

(4) For nonhazardous solid waste emergency orders, notice shall be mailed and published not later than the tenth day before the hearing to affirm, modify, or set aside the emergency order, as is required by Chapter 39 of this title for notice of a hearing on an application for a nonhazardous waste permit.

(5) For hazardous solid waste emergency orders, including UIC emergency orders, notice shall be mailed and published at least 30 days before the hearing to affirm, modify, or set aside the emergency order, as required by Chapter 39 of this title for notice of a hearing on an application for a hazardous waste permit. The commission must also give at least 45 days for public comment before issuing the order.

(6) For suspension of beneficial inflows under Texas Water Code, §11.148, notice shall be published in a newspaper or newspapers of general circulation in the affected area not later than the 15th day before the hearing to all affected persons.

(7) For water utility emergency orders for operation of a utility, notice shall be mailed or hand delivered to the utility not later than the tenth day before the hearing to affirm modify or set aside.

(8) For water utility temporary rate increase orders, notice shall be mailed or delivered to the affected ratepayers not later than the tenth day before the hearing to affirm, modify, or set aside.

(9) For air catastrophe emergency orders, notice shall be published in a newspaper of general circulation in the nearest municipality not later than the tenth day before the hearing.

(10) For generalized condition of air pollution emergency orders, the timing, method, and recipients of notice shall be as practicable under the circumstances.

(11) For radioactive substances emergency orders, notice shall be provided by personal service or certified mail to those named in the order not later than the tenth day before the hearing to affirm, modify, or set aside.

(12) For radioactive material impoundment, notice shall be provided by personal service or certified mail to those named in the order not later than the tenth day before the hearing to affirm, modify, or set aside.

(13) For petroleum storage tank emergency orders, notice shall be provided by certified mail, hand delivery, or if that fails, one time in the *Texas Register* or published once in the county newspaper not later than the tenth day before the hearing to affirm, modify, or set aside.

(14) For imminent and substantial endangerment emergency orders, notice shall be given by certified mail for hand delivery to the person named in the order, and if that fails, published once in the *Texas Register* and once in the newspaper of general circulation not later than the tenth day before the hearing to affirm, modify, or set aside.

(15) For on-site sewage and disposal system emergency orders, notice shall be mailed to those in the order not later than ten days before the hearing to affirm, modify, or set aside.

(f) Statutes or rules requiring notice of hearing or setting procedures for the issuance of permits do not apply to a hearing on an emergency order issued under this chapter unless they specifically require notice for an emergency order.

(g) If the commission acts on an application for a temporary order, or the commission or executive director acts on an application for an emergency order, the chief clerk or the office designated by the executive director shall mail notice of the action to the applicant, the executive director, public interest counsel, and other persons who have filed hearing requests or public comment.

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

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CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253.

Background and Summary of the Factual Basis for the Proposed Rules

The rules in Chapter 39, Subchapters A - E were initially adopted to be effective January 8, 1997 (December 27, 1996, issue of the *Texas Register* (21 TexReg 12550)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including those in Chapter 39, Subchapters A - E, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking would repeal obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and remove unnecessary sections from the commission's rules.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability date. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

Subchapter A: Applicability and General Provisions

The commission proposes the repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, and 39.25. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter B: Public Notice of Solid Waste Applications

The commission proposes the repeal of §§39.101, 39.103, 39.105 - 39.107, and 39.109. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter C: Public Notice of Water Quality Applications

The commission proposes the repeal of §39.151. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter D: Public Notice of Air Quality Applications

The commission proposes the repeal of §39.201. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter E: Public Notice of Other Specific Applications

The commission proposes the repeal of §39.251 and §39.253. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Fiscal Note: Costs to State and Local Government

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

The proposed rulemaking would repeal rules in Chapter 39, Subchapters A - E regarding public notice and participation because these rules are obsolete. The obsolete rules generally apply to certain permit applications that were administratively complete before September 1, 1999. HB 801 superseded the public participation rules in Chapter 39, Subchapters A - E for certain permit applications declared administratively complete on or after September 1, 1999. The rules that implemented HB 801 and subsequent rulemakings to implement legislation and commission policy nullified the rules that are proposed for repeal.

The rules are proposed for repeal because the reviews of applications declared administratively complete prior to September 1, 1999 have been completed. The current requirements for public notice and participation in Chapter 39 and other chapters are not affected by this proposed rulemaking. No fiscal implications are anticipated for the state or units of local government.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the repeals will be to eliminate obsolete rules regarding the public participation requirements for certain permit applications.

The proposed repeals are not anticipated to result in fiscal implications for businesses or individuals. The rules are proposed for repeal because they have been obsolete since the commission completed its reviews of all of the applications declared administratively complete before September 1, 1999. The current requirements for public participation in Chapter 39 and other chapters are not affected by this proposed rulemaking. The proposed rulemaking does not remove or add fees and does not affect requirements for any regulated entities.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect a rural community in a material way for the first five years that the proposed repeals are in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed repeals are in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking repeals obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 is procedural in nature and will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

None of the sections proposed for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected if the commission repeals these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-119-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER A. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

§39.1. Applicability.
§39.3. Purpose.
§39.5. General Provisions.
§39.7. Mailing Lists.
§39.9. Deadline for Public Comment and Hearing Requests.
§39.11. Text of Public Notice.
§39.13. Mailed Notice.
§39.15. Public Notice Not Required for Certain Types of Applications.
§39.17. Notice of Minor Amendment.
§39.19. Notice of Executive Director's Recommendation To Deny Application.
§39.21. Notice of Commission Meeting To Evaluate a Hearing Request on an Application.
§39.23. Notice of Hearing Held by SOAH, Including Hearing on Hearing Requests.
§39.25. Notice of Contested Enforcement Case Hearing.

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 B. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §§39.101, 39.103, 39.105 - 39.107, 39.109

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, §§5.013, 5.102, and 5.103; and THSC, §361.024.

§39.101. Application for Municipal Solid Waste Permit.
§39.103. Application for Industrial or Hazardous Waste Facility Permit.
§39.105. Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit.

§39.106. Application for Modification of a Municipal Solid Waste Permit or Registration.

§39.107. Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit.

§39.109. Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit.

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

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SUBCHAPTER C. PUBLIC NOTICE OF WATER QUALITY APPLICATIONS

30 TAC §39.151

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeal is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024.

§39.151. Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

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. PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

30 TAC §39.201

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The repeal is also proposed under Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, and 5.103; and THSC, §382.017.

§39.201. Application for a Preconstruction 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 October 25, 2019.

TRD-201903949
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-6812

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SUBCHAPTER E. PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS

30 TAC §39.251, §39.253

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019.

§39.251. Application for Injection Well Permit.

§39.253. Application for Production Area Authorization.

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

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CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §39.402 and §39.403, in Subchapter H, concerning applicability; §39.501 and §39.503, in Subchapter I, concerning public notice of solid waste applications; and §39.709, in Subchapter M, concerning public notice for radioactive material licenses. The commission also proposes new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011, in new Subchapter P, concerning other notice requirements.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in 30 TAC Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed Chapter 39, new Subchapter P. The proposed rule in Subchapter P carry forward only the portions of the rules that are currently applicable to the types of applications in new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 and do not add or remove any current notice requirements for these applications. The addition of new Subchapter P would increase the ease of understanding the applicable notice requirements for these applications. In addition, the proposed amendments to Chapter 39 remove obsolete text and update cross-references.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes such as grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

Subchapter H: Applicability and General Provisions

§39.402, Applicability to Air Quality Permits and Permit Amendments

The commission proposes to amend §39.402 by repealing subsection (b) and re-lettering subsection (c) as subsection (b).

§39.403, Applicability

The commission proposes to amend §39.403(a) by removing obsolete text that references rules that are concurrently proposed for repeal. The commission proposes to amend §39.403(a)(1) to add that proposed subsection (e) lists the types of applications for which public notice is not required.

The commission proposes to amend §39.403(c) by removing §39.403(c)(4) - (8) and relocating the text, together with rules referenced in those paragraphs which are concurrently proposed for repeal, to Chapter 39, proposed new Subchapter P. The commission also proposes to remove §39.403(c)(9) and relocate the text to proposed §39.403(e)(4). Due to the relocation of the text in §39.403(c)(4) - (9), the commission proposes to renumber paragraphs (10) - (12) as §39.403(c)(4) - (6). Because §39.551 is in Chapter 39, Subchapter J, the commission also proposes to amend §39.403(c)(4), to ensure there is no conflict in the introductory part of amended §39.403(c) and (c)(4). Finally, the commission proposes to add §39.403(c)(7), which references applications subject to Chapter 39, new Subchapter P.

The commission proposes to amend §39.403(d) by referencing §39.705 (Mailed Notice for Radioactive Material Licenses) to ensure the correct mailed notice information is included.

The commission proposes to add §39.403(e)(1) - (4) to relocate and update the text of §39.15(a) and §39.403(c)(9). The cross-reference to §50.45 is also proposed to be updated to §50.145 (Corrections to Permits).

Subchapter I: Public Notice of Solid Waste Applications

§39.501, Application for Municipal Solid Waste Permit

The commission proposes to amend §39.501 by removing obsolete subsection (e)(1) and obsolete text in subsection (e)(2) regarding a public meeting for an application for a new municipal solid waste facility because no applications filed before September 1, 2005 remain pending with the commission. The commission also proposes re-designating subsection (e)(2) and (3) as subsection (e)(1) and (2) and updating cross-references in subsection (e)(4) - (6).

§39.503, Application for Industrial or Hazardous Waste Facility Permit

The commission proposes to amend §39.503(b) and (c) by updating the cross-references in each subsection to §50.45, which is concurrently proposed for repeal, to §50.145 (Corrections to Permits). In addition, the commission proposes to remove obsolete text in §39.503(e)(1) and (e)(2) and in §39.503(e)(4) regarding requirement for an applicant to hold a public meeting for an application for a new hazardous waste facility, for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, or for which there is "substantial public interest" filed because no applications filed before September 1, 2005 remain pending with the commission.

Subchapter M, Public Notice for Radioactive Material Licenses

§39.709, Notice of Contested Case Hearing on Application

The commission proposes to amend §39.709 by removing subsection (d) because no new license applications filed on or before January 1, 2007 remain pending with the commission.

Subchapter P, Other Notice Requirements

§39.1001, Purpose and Applicability

The commission proposes new §39.1001 as part of the relocation of text in §39.1 (Applicability) and §39.3 (Purpose), both concurrently proposed for repeal, and from §39.403 (Applicability) to proposed new Subchapter P. Proposed new §39.1001 specifies the types of applications for which an opportunity for contested case hearings is otherwise not required by law and which are not subject to the requirements of Chapter 39, Subchapters G - M.

§39.1003, Notice of Application for Minor Amendments

The commission proposes new §39.1003 to relocate text from §39.403(c)(5), and from §39.11 (Text of Public Notice) and §39.17 (Notice of Minor Amendment), which are concurrently proposed for repeal. Proposed new §39.1003(a) provides that for applications for minor amendments of a permit under Chapter 305, Subchapter D (Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice to the persons listed in §39.413 (Mailed Notice), as well as, for minor amendments of injection well permit applications. Proposed new §39.1003(b) specifies the text of the notice of a minor amendment and new §39.1003(c) provides that the deadline to file public comment is ten days after mailing. Finally, proposed new §39.1003(d) provides that §39.1003(a) does not apply to applications seeking a minor amendment or minor modification of a wastewater discharge permit. For such applications, the notice requirements are in §39.551 (Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

§39.1005, Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit

The commission proposes new §39.1005 to relocate text from §39.403(c)(6), and from §39.11 (Text of Public Notice) and §39.105 (Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), which are concurrently proposed for repeal. Proposed new §39.1005(b) specifies the text for notice requirements in §305.69 (Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits. Proposed §39.1005(c) specifies requirements for mailed notice for these applications.

§39.1007, Notice of Class 2 Modification of an Industrial Solid Waste or Hazardous Waste Permit

The commission proposes new §39.1007 to relocate text from §39.403(c)(8), from §39.107 (Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), which is concurrently proposed for repeal, from §39.411 (Text of Public Notice) and §305.69 (Solid Waste Permit Modification at the Request of the Permittee). Proposed new §39.1007 provides that notice requirements for applications for Class 2 modifications are in §305.69, except that the text of notice shall comply with §305.69 and §39.411(b). In addition, it provides that the notice shall specify the deadline to file public comment with the chief clerk and that when mailed notice is required, the applicant shall mail notice to the persons listed in §39.413 (Mailed Notice).

§39.1009, Notice of Modification of a Municipal Solid Waste Permit or Registration

The commission proposes new §39.1009 to relocate text from §39.403(c)(7), and from §39.106(a) and (b) (Application for Modification of a Municipal Solid Waste Permit or Registration), which is concurrently proposed for repeal. Proposed §39.1009 specifies that the mailed notice requirements for applications are in §305.70 (Municipal Solid Waste Permit and Registration Modifications).

§39.1011, Notice of Application for Voluntary Transfer of Injection Well Permit

The commission proposes new §39.1011 to relocate text from §39.403(c)(4), and from §39.11 (Text of Public Notice) and §39.15 (Public Notice Not Required for Certain Types of Applications), which are concurrently proposed for repeal. Proposed new §39.1011 specifies the requirements for the content of and to whom notice of a voluntary transfer of an injection well permit must be provided, as well as, the deadline to file public comment on the application.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters, would update cross-references of rules related to public notice of certain types of permit applications and other types of actions.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public notice and public participation in certain types of permit applications. The proposed rules are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. These changes will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect. This rulemaking addresses necessary changes in order to update cross-references and remove obsolete language in various procedural and permitting program rules.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §§39.402, 39.403, 39.501, 39.503, and 39.709, and proposal of new Subchapter P, §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments of §§39.402, 39.403, 39.501, 39.503, and 39.709, and proposal of new Subchapter P, §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments of §§39.402, 39.403, 39.501, 39.503, and 39.709, and proposal of new Subchapter P, §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rules do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the rules affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Proposed amended §§39.402, 39.403, 39.501, 39.503, and 39.709, and proposed new Subchapter P, §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011, are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.402, §39.403

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§39.402. Applicability to Air Quality Permits and Permit Amendments.

(a) As specified in those subchapters, Subchapters H and K of this chapter (relating to Applicability and General Provisions; and Public Notice of Air Quality Permit Applications, respectively) apply to applications for:

(1) new air quality permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits);

(2) a new major source or a major modification for facilities subject to the requirements of Chapter 116, Subchapter B, Division 5 or 6 of this title (relating to New Source Review Permits, Nonattainment Review Permits and Prevention of Significant Deterioration Permits);

(3) air quality permit amendments under Chapter 116, Subchapter B of this title when the amendment involves:

(A) a change in character of emissions or release of an air contaminant not previously authorized under the permit;

(B) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice *de minimis* levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO_2);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NO_x), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NO_x;

(ii) 25 tpy of VOC, SO_2, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title (relating to Nonat-

tainment and Prevention of Significant Deterioration Review Definitions); or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(D) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(4) new air quality flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits);

(5) air quality permit amendments to flexible permits under Chapter 116, Subchapter G of this title when the amendment involves:

(A) change in character of emissions or release of an air contaminant not previously authorized under the permit;

(B) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice *de minimis* levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO_2);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NO_x), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(C) a facility affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NO_x;

(ii) 25 tpy of VOC, SO_2, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title; or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(D) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title; or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(6) renewal of air quality permits under Chapter 116, Subchapter D of this title (relating to Permit Renewals);

(7) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(8) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116, Subchapter C of this title (relating to Plant-Wide Applicability Limits).

(9) applications for multiple plant permits (MPPs) under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits);

(10) applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

(11) concrete batch plants without enhanced controls authorized by an air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project; and

(12) change of location or relocation of a portable facility, consistent with the requirements of §116.178 of this title (relating to Relocations and Changes of Location of Portable Facilities).

~~[(b) Unless otherwise stated in this chapter, applications for air quality permits and permit amendments declared administratively complete on or after September 1, 1999 and filed before the effective date of this section are governed by the rules in Subchapters H and K of this chapter as they existed immediately before the effective date of this section and those rules are continued in effect for that purpose.]~~

(b) [~~(c)~~] Regardless of the applicability of [~~Notwithstanding~~] subsection (a) [~~or (b)~~] of this section, Subchapters H and K of this chapter do not apply to the following applications where notice or opportunity for contested case hearings is not otherwise required by law:

(1) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(2) applications under Chapter 116, Subchapter F of this title, except applications for concrete batch plants authorized by standard permit as referenced in subsection (a)(11) of this section; and

(3) registrations under Chapter 106 of this title (relating to Permits by Rule).

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - J, L, and M of this chapter (relating to Applicability and General Provi-

sions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). [~~Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications; Public Notice of Air Quality Applications; and Public Notice of Other Specific Applications).~~] All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits). [~~The effective date of the amendment of existing §39.403, specifically with respect to subsection (c)(6) and (7) of this section, is June 3, 2002. Applications for modifications filed before this amended section becomes effective will be subject to this section as it existed prior to June 3, 2002.~~]

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - J, L, and M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsection (d) of this section specifies that only certain sections apply to applications for radioactive materials licenses. Subsection (e) of this section lists the types of applications for which public notice is not required.

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - J, L, and M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations or exempted aquifers under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (d) of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing); and

(8) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

(c) Regardless of the applicability of [~~Notwithstanding~~] subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title;

(3) applications under Chapter 332 of this title (relating to Composting);

[~~(4) applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;~~]

[~~(5) applications for minor amendments under §305.62(c)(2) of this title (relating to Amendments). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;~~]

[~~(6) applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;~~]

[~~(7) applications for modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Notice for modifications shall comply with the requirements of §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness;~~]

[~~(8) applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) of this title. Notice for Class 2 modifications shall comply with the requirements of §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 and §305.69(c) of this title;~~]

[~~(9) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee);~~]

(4) [~~(10)~~] applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3)

of this title, except as provided by §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge;

(5) [~~(11)~~] applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); [~~or~~]

(6) [~~(12)~~] applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-injection Units Registration); or [~~.~~]

(7) applications listed in Subchapter P of this chapter (relating to Other Notice Requirements).

(d) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title (relating to General Notice Provisions); §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice) that are not listed in §39.705 of this title (relating to Mailed Notice for Radioactive Material Licenses).

(e) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §50.145 of this title (relating to Corrections of Permits);

(2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(3) applications for special collection route permits under §330.7(c)(2) of this title (relating to Permit Required); or

(4) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee).

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.501, §39.503

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2001.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.

§39.501. Application for Municipal Solid Waste Permit.

(a) Applicability. This section applies to applications for municipal solid waste permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant for a municipal solid waste permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing must be by certified mail.

(c) Notice of Receipt of Application and Intent to Obtain a Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. This notice must contain the text as required by §39.411(b)(1) - (11) of this title (relating to Text of Public Notice);

(B) the chief clerk shall publish Notice of Receipt of Application and Intent to Obtain Permit in the Texas Register; []and

(C) the executive director or chief clerk shall mail the Notice of Receipt of Application and Intent to Obtain Permit, along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or ex-

traterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). The notice must be published after the chief clerk has mailed the Notice of Application and Preliminary Decision to the applicant. The notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(e) Notice of public meeting.

[(1) If an application for a new facility is filed before September 1, 2005:]

[(A) the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; and]

[(B) the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.]

(1) [(2)] For [If] an application for a new facility, the agency [is filed on or after September 1, 2005]:

[(A) the agency:]

(A) [(i)] may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) [(ii)] shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(i) [(I)] on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) [(II)] if the executive director determines that there is substantial public interest in the proposed facility.[; and]

(2) [(B)] The [the] applicant may hold a public meeting in the county in which the facility is proposed to be located.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) [(1)(A) or (2)(A)] of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (2) [(1)(B) or (2)(B)] of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) For public meetings held by the agency under paragraph (1) [(1)(A) or (2)(A)] of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) Notice of hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend a permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection must be completed at least 30 days before the hearing.

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth in 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.145 [~~§50.45~~] of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417). The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.145 [~~§50.45~~] of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For [~~If~~] an application for a new hazardous waste facility, the agency [~~is filed~~]:

[~~(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or~~]

[~~(B) on or after September 1, 2005, the agency:~~]

A [~~(i)~~] may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

B [~~(ii)~~] shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning this application:

(i) [~~(I)~~] on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) [~~(II)~~] if the executive director determines that there is substantial public interest in the proposed facility.

(2) For [~~If~~] an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency [~~is filed~~]:

[~~(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment concerning the application if a person affected files a~~

~~request for a public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests; or~~]

~~[(B) on or after September 1, 2005, the agency:]~~

(A) [~~(i)~~] may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application; but

(B) [~~(ii)~~] shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) [~~(I)~~] on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) [~~(II)~~] if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' [~~homeowners(or property owners(~~] association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) For [~~If~~] an application for a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant may hold a public meeting in the county in which the facility is proposed to be located. [~~is filed:~~]

~~[(A) before September 1, 2005, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed; or]~~

~~[(B) on or after September 1, 2005, the applicant may hold a public meeting in the county in which the facility is proposed to be located.]~~

(5) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

(6) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(7) For public meetings held by the agency under paragraphs [~~paragraph~~] (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches (18 square inches). The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) Injection wells. This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, (60 FR 63417) apply to all applications for hazardous waste permits.

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

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Robert Martinez
Director, Environmental Law Division
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SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §39.709

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and THSC, §401.051, which authorizes the commission adopt rules relating to control of sources of radiation. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§39.709. Notice of Contested Case Hearing on Application.

(a) The requirements of this section apply when an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For [~~Except as provided in subsection (d) of this section, for~~] applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), or Subchapter L of this title (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), notice must be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) or Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities), notice must be mailed no later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(12) and (d) of this title (relating to Text of Public Notice).

~~[(d) For an application for a new license to dispose of by-product material under Chapter 336, Subchapter L of this title that was filed with the Department of State Health Services on or before January 1, 2007, notice under this section must be provided to the applicant, the office of public interest counsel, the executive director, and any person who timely submitted a request for a contested case hearing by mail at least 10 days in advance of the hearing.]~~

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

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER P. OTHER NOTICE REQUIREMENTS

30 TAC §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, 39.1011

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The new sections are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides

the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§39.1001. Purpose and Applicability.

This subchapter specifies the notice requirements for certain applications where opportunity for contested case hearing is otherwise not required by law and which are not subject to the requirements of Subchapters G - M of this chapter (relating to Public Notice for Applications for Consolidated Permits; Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Permit Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses).

§39.1003. Notice of Application for Minor Amendments.

(a) Except as provided in subsection (d) of this section, the only required notice for applications for a minor amendment of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits) is that the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice). For an application for a minor amendment of an injection well permit, the chief clerk shall also mail notice to the persons entitled to receive notice under §39.651(c)(4) of this title (relating to Application for Injection Well Permit).

(b) The text of the notice of application for minor amendment of a permit must provide:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the application and business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures;

(6) the application or permit number;

(7) a statement that the executive director may issue final approval of the application;

(8) a statement of whether the executive director has prepared a draft permit; and

(9) the deadline to file comments.

(c) The deadline to file public comment is ten days after mailing.

(d) Subsection (a) of this section does not apply to applications for a minor amendment or minor modification of a wastewater discharge permit. For such applications, the notice requirements are in §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

§39.1005. Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit.

(a) Notice requirements for applications for Class 1 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits.

(b) The text of required notice shall follow the requirements of §305.69 of this title and provide:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the application and business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures; and

(6) the application or permit number.

(c) When mailed notice is required, the applicant shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

§39.1007. Notice of Class 2 Modification of an Industrial Solid Waste or Hazardous Waste Permit.

The notice requirements for applications for Class 2 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall comply with §305.69 of this title and §39.411(b) of this title (relating to Text of Public Notice). The notice shall specify the deadline, as specified in §305.69 of this title, to file with the chief clerk public comment. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

§39.1009. Notice of Modification of a Municipal Solid Waste Permit or Registration.

(a) When mailed notice is required under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), the mailed notice shall be mailed by the permit or registration holder and the text of the notice shall comply with §39.411(b)(1) - (3), (6), (7), (9), and (11) of this title (relating to Text of Public Notice), and shall provide the location and phone number of the appropriate regional office of the commission to be contacted for information on the location where a copy of the application is available for review and copying.

(b) When mailed notice is required by §305.70 of this title, notice shall be mailed by the permit or registration holder to the persons listed in §39.413 of this title (relating to Mailed Notice).

§39.1011. Notice of Application for Voluntary Transfer of Injection Well Permit.

(a) For notice of application for the voluntary transfer of an injection well permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice). The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(3) persons who own mineral rights underlying the existing or proposed injection well facility; and

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located.

(b) The text of the notice of application for the voluntary transfer of an injection well permit must provide:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the application and business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures;

(6) the application or permit number;

(7) a statement that the executive director may issue final approval of the application;

(8) a statement of whether the executive director has prepared a draft permit; and

(9) the deadline to file comments.

(c) The deadline to file public comment for the voluntary transfer of an injection well permit is ten days after mailing.

(d) If the executive director determines that changes to the injection well permit in addition to the transfer are necessary, other notice requirements may apply.

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

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CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603.

If adopted, the amendments to §§39.405(g)(3) and (h)(2)(C) and (3); 39.411(e)(4)(A)(i), (e)(5), (f)(8), and (g); 39.419(e)(1); 39.420(d)(6); 39.601; and 39.603 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is concurrently proposing to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapters 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the SIP are also necessary. Sections 39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 include text that is now obsolete, and this rulemaking will update or remove that text.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these three rulemaking projects.

Federal Clean Air Act, §110(l)

All revisions to the SIP are subject to EPA's finding that the revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the

Federal Clean Air Act (74 United States Code (USC), §7410(l)). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes such as grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

Subchapter H: Applicability and General Provisions

§39.405, General Notice Provisions

The commission proposes to amend §39.405(g)(3) to remove obsolete text because no applications filed prior to June 24, 2010 remain pending for commission review. The commission also proposes to amend §39.405(h)(2)(C) and (3) to update cross-references to 19 TAC Chapter 89.

§39.411, Text of Public Notice

The commission proposes to amend §39.411(e)(4)(A)(i) and (ii), (e)(5), (f)(8) and (9), and (g) to remove obsolete text because no applications filed prior to June 18, 2010 remain pending for commission review.

§39.419, Notice of Application and Preliminary Decision

The commission proposes to amend §39.419(e)(1) to remove obsolete text because no applications filed prior to June 24, 2010, remain pending for commission review.

§39.420, Transmittal of the Executive Director's Response to Comments and Decision

The commission proposes to amend §39.420(b)(6) and (d)(6) to update the reference from the commission's Office of Public Assistance to the External Relations Division.

Subchapter K: Public Notice of Air Quality Permit Applications

§39.601, Applicability

The commission proposes to amend §39.601 to remove obsolete text because no applications declared administratively complete before September 1, 1999, remain pending for the commission's review.

§39.603, Newspaper Notice

The commission proposes to amend §39.603(f)(1) and (g) to update cross-references.

Fiscal Note: Costs to State and Local Government

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

This rulemaking will amend §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 to remove obsolete text and update cross-references.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect. This rulemaking addresses the removal of obsolete text.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, pro-

ductivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do the amendments 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. Rather, this rulemaking removes obsolete text and updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain air quality permit applications.

Texas Government Code, Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 are procedural in nature and will not burden private real property. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-120-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.405, 39.411, 39.419, 39.420

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with

the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are also proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §382.056.

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by Subchapters G - J, L, and M of this chapter (relating to Public Notice for Applications for Consolidated Permits; Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. When Subchapters G - L of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and affidavit. When Subchapters G - J and L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality;

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county; and

(3) air quality permit applications required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications, respectively) to publish notice shall comply with the requirements of §39.603 of this title (relating to Newspaper Notice).

(g) Copy of application. The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. The copy of the application must comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings; and

(3) where applicable, for air quality permit applications [~~filed on or after June 24, 2010~~], the applicant shall also make available the executive director's draft permit, preliminary determination summary and air quality analysis for review and copying beginning on the first day of newspaper publication required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings.

(h) Alternative language newspaper notice.

(1) Applicability. The following are subject to this subsection:

(A) Air quality permit applications; and

(B) Permit applications other than air quality permit applications that are required to comply with §39.418 or §39.419 of this

title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after November 30, 2005.

(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title, and either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) the school that otherwise would be required to provide a bilingual education program has been granted an exception from the requirements to provide the program as provided for in 19 TAC §89.1207(a) (relating to Bilingual Education Exceptions and English as a Second Language Waivers [~~Exceptions and Waivers~~]).

(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d) [~~§89.1205(e)~~], and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.

(4) The notice must be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

(5) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title.

(6) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(i) permit application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of the facility; and

(v) a note that additional information is in the public notice section of the same issue.

(7) Waste and water quality alternative language must be published in the public notice section of the alternative language newspaper and must comply with §39.411 of this title.

(8) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(9) Notice under this subsection will only be required to be published within the United States.

(10) Each alternative language publication must follow the requirements of this chapter that are consistent with this subsection.

(11) If a waiver is received under this subsection on an air quality permit application, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies). If a waiver is received under this subsection on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.

(i) Failure to publish notice of air quality permit applications. If the chief clerk prepares a newspaper notice that is required by Subchapters H and K of this chapter for air quality permit applications and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or, for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (j) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(j) Notice and affidavit for air quality permit applications. When Subchapters H and K of this chapter require an applicant for an air quality permit action to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (i) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(k) For applications filed on or after September 1, 2015, and subject to providing notice as prescribed by Texas Water Code, §5.115, the commission shall make available on the commission's website notice of administratively complete applications for a permit or license authorized under the Texas Water Code and the Texas Health and Safety Code.

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that 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 facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that 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 facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) [~~filed on or after June 18, 2010~~];

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction[~~, filed on or after June 18, 2010~~]; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that 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 facility is to be located if there is substantial public interest in the proposed activity when requested by any interested person for the following applications [~~that are filed on or after June 18, 2010~~]:

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards or under state standards in Chapters 111 - 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested

case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(iv) for initial registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) received on or after January 1, 2017, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

(III) if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(v) for new air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively and technically complete and prepared a draft permit within 15 days of receipt of the application, the following information:

(I) the date the application was received and the date the draft permit was completed; and

(II) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(d) of this title. If no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; or

(vi) for all air quality permit applications other than those in clauses (i) - (v) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(vi) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting;[-]

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;"

(15) if notice is for an application for an air quality permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision, or the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as provided for in §39.603(c) or (d) of this title, to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive direc-

tor's draft permit and preliminary decision are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that 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 facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period will be for at least 30 days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's website;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications [~~filed on or after June 18, 2010~~] for permits under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits and Prevention of Significant Deterioration Review):

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications [~~filed on or after June 18, 2010~~] for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications [~~filed on or after June 18, 2010~~], the text of the notice must include the information in this subsection:[~~. Air quality permit applications filed before June 18, 2010, are governed by the rules in Subchapters H and K of this chapter as they existed immediately before June 18, 2010, and those rules are continued in effect for that purpose.~~]

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (16) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9), and (16) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the chief clerk, except for air applications under subsection (e) of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. For applications filed on or after September 1, 2015, this mailing will occur no earlier than 30 days after written notification of the draft permit is provided by the executive director to the state senator and state representative of the area in which the facility which is the subject of the application is or will be located. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.405(h) of this title (relating to General Notice Provisions), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply.

(1) [~~Air quality permit applications that are filed on or after June 24, 2010, are subject to this paragraph. Applications filed before June 24, 2010 are governed by the rules as they existed immediately before June 24, 2010, and those rules are continued in effect for that purpose.~~] After technical review is complete for applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the executive director shall file the executive director's draft permit and preliminary decision, the preliminary determination summary and air quality analysis, as applicable, with the chief clerk and the chief clerk shall post these on the commission's website. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.405(h) of this title, unless the application is for any renewal application of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History).

(2) If notice under this section is required, the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice).

(3) If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

(a) Except for air quality permit applications, when required by and subject to §55.156 of this title (relating to Public Comment Processing), after the close of the comment period, the chief clerk shall transmit to the people listed in subsection (b) of this section the following information:

(1) the executive director's decision;

(2) the executive director's response to public comments;

(3) instructions for requesting that the commission reconsider the executive director's decision; and

(4) instructions for requesting a contested case hearing.

(b) The following persons shall be sent the information listed in subsection (a) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) the director of the External Relations Division [~~Office of Public Assistance~~].

(c) When required by and subject to §55.156 of this title, for air quality permit applications, after the close of the comment period, the chief clerk shall:

(1) transmit to the people listed in subsection (d) of this section the following information:

(A) the executive director's decision;

(B) the executive director's response to public comments;

(C) instructions for requesting that the commission reconsider the executive director's decision; and

(D) instructions, which include the statements in clause (ii) of this subparagraph, for requesting a contested case hearing for applications:

(i) for the following types of applications:

(I) permit applications which are subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits) as described in §39.402(a)(2) of this title (relating to Applicability to Air Quality Permits and Permit Amendments);

(II) permit and permit amendment applications which are not subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, and for which hearing requests were received by the end of the 30-day comment period following the final publication of Notice of Receipt of Application and Intent to Obtain Permit, and these requests were not withdrawn as described in:

(-a-) §39.402(a)(1), (3), (11) and (12) of this title; and

(-b-) §39.402(a)(4) and (5) of this title;

(III) applications described in §39.402(7) of this title; and

(ii) the following statements must be included:

(I) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(II) that a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(III) that a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(IV) that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and

(V) that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment; and

(2) for applications subject to the requirements of requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, make available by

electronic means on the commission's Web site the executive director's draft permit and preliminary decision, the executive director's response to public comments, and as applicable, preliminary determination summary and air quality analysis.

(d) The following persons shall be sent the information listed in subsection (c) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) the director of the External Relations Division [~~Office of Public Assistance~~].

(e) For air quality permit applications which meet the following conditions, items listed in subsection (c)(1)(C) and (D) of this section are not required to be included in the transmittals:

(1) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;

(2) applications for which one or more timely hearing requests are submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and for which this is the only opportunity to request a hearing, and all of the requests are withdrawn before the date the preliminary decision is issued;

(3) the application is for any renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or

(4) applications for a Prevention of Significant Deterioration permit that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions).[;]

(f) For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section and the executive director may act on the application under §50.133 of this title (relating to Executive Director Action on Application or WQMP Update).

(g) For post-closure order applications under Subchapter N of this chapter (relating to Public Notice of Post-Closure Orders), the chief clerk shall transmit only items listed in subsection (a)(1) and (2) of this section to the people listed in subsection (b)(1) - (3), (5), and (6) of this section.

(h) For applications for air quality permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk will not transmit the item listed in 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.

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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

30 TAC §39.601, §39.603

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are also proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §382.056.

§39.601. Applicability.

[~~Air quality permit applications or registrations that are declared administratively complete before September 1, 1999 are subject to the requirements of Chapter 116, Subchapter B, Division 3 (relating to Public Notification and Comment Procedures) (effective March 21, 1999) or (effective December 24, 1998).~~] Air quality permit applications or reg-

istrations that are declared administratively complete by the executive director on or after September 1, 1999 are subject to this subchapter.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit (NORI) under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision (NAPD) under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the NAPD to the applicant. This notice must contain the text as required by §39.411(f) of this title.

(c) Owners and operators who submit initial registration applications on or after January 1, 2017, for authorization to construct and operate a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) shall publish a consolidated NORI under §39.418 of this title and a NAPD under §39.419 of this title no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. This notice must contain the text as required by §39.411(f) of this title.

(d) Owners and operators who submit applications that are declared administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application shall publish a consolidated NORI under §39.418 of this title and a NAPD under §39.419 of this title no later than 30 days after the executive director notifies the applicant of the declaration of administrative completeness and the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the applicant. This notice must contain the text as required by §39.411(e) of this title.

(e) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air quality permit application or registration, the applicant or registrant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application or registration number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(f) Alternative publication procedures for small businesses.

(1) The applicant or registrant does not have to comply with subsection (e)(2) [~~(d)(2)~~] of this section if all of the following conditions are met:

(A) the applicant or registrant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's or registrant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(g) If an air application or registration is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant or registrant shall publish notice once in a newspaper as described in subsection (e) [~~(d)~~] of this section, containing the information under §39.411(h) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

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

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CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§50.2, 50.13, 50.15, 50.17, 50.19, 50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45.

Background and Summary of the Factual Basis for the Proposed Rules

The rules in Chapter 50, Subchapters A - C were initially adopted to be effective June 6, 1996, (May 28, 1996, issue of the *Texas Register* (21 TexReg 4734)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including those in Chapter 50, Subchapters A - C.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking would repeal obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and remove unnecessary sections from the commission's rules.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability date. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

Subchapter A: Purpose, Applicability, and Definitions

The commission proposes the repeal of §50.2. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter B: Action by the Commission

The commission proposes the repeal of §§50.13, 50.15, 50.17, and 50.19. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter C: Action by Executive Director

The commission proposes the repeal of §§50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Fiscal Note: Costs to State and Local Government

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

The proposed rulemaking would repeal rules in Chapter 50, Subchapters A - C regarding action by the commission or executive director on certain applications because these rules are obsolete. The obsolete rules generally apply to certain permit applications that were administratively complete before September 1, 1999. HB 801 superseded the public participation rules in Chapter 50, Subchapters A - C for certain permit applications declared administratively complete on or after September 1, 1999. The rules that implemented HB 801 and subsequent rulemakings to implement legislation and commission policy nullified the rules that are proposed for repeal.

The rules are proposed for repeal because the reviews of applications declared administratively complete prior to September 1, 1999, have been completed. The current requirements regarding action by the commission or executive director on certain applications in Chapter 50 are not affected by this proposed rulemaking. No fiscal implications are anticipated for the state or units of local government.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the repeals will be to eliminate obsolete rules regarding the public participation requirements for certain permit applications.

The proposed repeals are not anticipated to result in fiscal implications for businesses or individuals. The rules are proposed for repeal because they have been obsolete since the commission completed its reviews of all of the applications declared administratively complete before September 1, 1999. The current requirements action by the commission or executive director on certain applications in Chapter 50 are not affected by this proposed rulemaking. The proposed rulemaking does not remove or add fees and does not affect requirements for any regulated entities.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed repeals do not adversely affect a rural community in a material way for the first five years that the proposed repeals are in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the

proposed rulemaking for the first five-year period the proposed repeals are in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a Major environmental rule as defined in that statute. A Major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed repeal of §§50.2, 50.13, 50.15, 50.17, 50.19, 50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking repeals obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed repeal of §§50.2, 50.13, 50.15, 50.17, 50.19, 50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed repeal of §§50.2, 50.13, 50.15, 50.17, 50.19, 50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45 is procedural in nature and will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

None of the sections proposed for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected if the commission repeals these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.*

File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-119-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER A. PURPOSE, APPLICABILITY, AND DEFINITIONS

30 TAC §50.2

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeal is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

§50.2. Applicability.

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

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Robert Martinez
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SUBCHAPTER B. ACTION BY THE COMMISSION

30 TAC §§50.13, 50.15, 50.17, 50.19

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

§50.13. Action on Application.

§50.15. Scope of Proceedings.

§50.17. Commission Actions.

§50.19. Notice of Commission Action, Motion for Rehearing.

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. ACTION BY EXECUTIVE DIRECTOR

30 TAC §§50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, 50.45

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the

commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

§50.31. Purpose and Applicability.

§50.33. Executive Director Action on Application.

§50.35. Effective Date of Executive Director Action.

§50.37. Remand for Action by Executive Director.

§50.39. Motion for Reconsideration.

§50.41. Eligibility of Executive Director.

§50.43. Withdrawing the Application.

§50.45. Corrections to Permits.

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

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CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§50.102, 50.113, 50.131, and 50.139.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in 30 TAC Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references. Additionally, on August 14, 2019, the commission determined that the rules regarding voluntary emission reduction permits in 30 TAC Chapter 116 are also obsolete and no longer needed because the expiration dates and application deadlines in those rules have passed (August 30, 2019, issue of the *Texas Register* (44 TexReg 4750)). The repeal of the obsolete rules in Chapter 116, in which revisions to the State Implementation Plan (SIP) are not necessary, will be addressed in a separate rulemaking (Rule Project Number 2020-001-116-AI).

As part of this rulemaking, the commission is concurrently proposing amendments in Chapters 33, 35, 39, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Sections 50.102, 50.113, 50.131, and 50.139 are proposed to be amended by removing obsolete text and making grammatical corrections.

The commission is also concurrently proposing amendments to Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the SIP are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as grammatical corrections and correct use of reference. These changes are non-substantive and generally are not specifically discussed in this preamble.

§50.102, Applicability

The commission proposes to amend §50.102(a) by removing references to text that refers to obsolete rules concurrently proposed for repeal. Section 50.102(c) is proposed to be amended by removing obsolete text.

§50.113, Applicability and Action on Application

The commission proposes to amend §50.113(a) by removing obsolete text that refers to obsolete rules concurrently proposed for repeal. Section 50.113(d)(2) is proposed to be amended by removing obsolete text.

§50.131, Purpose and Applicability

The commission proposes to amend §50.131(b) by removing obsolete text concurrently being proposed for repeal.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will remove obsolete text as mentioned in the preamble.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The changes will minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect. This rulemaking addresses the removal of obsolete text.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §§50.102, 50.113, 50.131, and 50.139 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking removes obsolete text to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments of §§50.102, 50.113, 50.131, and 50.139 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in thestatutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Sections 50.102, 50.113, 50.131, and 50.139 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER E. PURPOSE, APPLICABILITY, AND DEFINITIONS

30 TAC §50.102

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§50.102. Applicability.

(a) Subchapters E - G of this chapter (relating to Purpose, Applicability and Definitions; Action by the Commission; and Action by the Executive Director) apply to any applications that are declared administratively complete on or after September 1, 1999, except as described in subsections (b) and (c) of this section [~~below. Any applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - C of this chapter (relating to Purpose, Applicability and Definitions; Action by the Commission; and Action by Executive Director)~~].

(b) Subchapters E - G of this chapter apply to certification of water quality management plan (WQMP) updates.

(c) Only the following sections of this chapter apply to initial applications for [~~voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code or~~] electric generating facility permits under [~~§39.264 of the~~] Texas Utilities Code, §39.264:

(1) §50.117 of this title (relating to Commission Actions);

(2) §50.131 of this title (relating to Purpose and Applicability);

(3) §50.133 of this title (relating to Executive Director Action on Application or WQMP update);

(4) §50.135 of this title (relating to Effective Date of Executive Director Action); and

(5) §50.145 of this title (relating to Corrections to Permits).

(d) This chapter does not apply to applications for emergency or temporary orders or temporary authorizations.

(e) Subchapters E - G of this chapter do not apply to air quality applications under Chapter 122 of this title (relating to Federal Operating Permits) except for §50.117 of this title [~~(relating to Commission Actions)~~].

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 October 25, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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SUBCHAPTER F. ACTION BY THE COMMISSION

30 TAC §50.113

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§50.113. Applicability and Action on Application.

(a) Applicability. This subchapter applies to applications that are declared administratively complete on or after September 1, 1999. [~~Applications that are declared administratively complete before September 1, 1999, are subject to Subchapter B of this chapter (relating to Action by the Commission).~~]

(b) This chapter does not create a right to a contested case hearing where the opportunity for a contested case hearing does not exist under other law.

(c) After the deadline for filing a request for reconsideration or contested case hearing under §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing), the commission may act on an application without holding a contested case hearing or acting on a request for reconsideration, if:

(1) no timely request for reconsideration or hearing has been received;

(2) all timely requests for reconsideration or hearing have been withdrawn, or have been denied by the commission;

(3) a judge has remanded the application because of settlement; or

(4) for applications under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382, the commission finds that there are no issues that:

(A) involve a disputed question of fact;

(B) were raised during the public comment period; and

(C) are relevant and material to the decision on the application.

(d) Without holding a contested case hearing, the commission may act on:

(1) an application for any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted;

(2) an application for any initial issuance of an air permit for an [~~a voluntary emission reduction or~~] electric generating facility;

(3) an application for a hazardous waste permit renewal under §305.631(a)(8) of this title (relating to Renewal);

(4) an application for a wastewater discharge permit renewal or amendment under Texas Water Code, §26.028(d), unless the commission determines that an applicant's compliance history as determined under Chapter 60 of this title (relating to Compliance History) raises issues regarding the applicant's ability to comply with a material term of its permit;

(5) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(6) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(7) an application for pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(8) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018; and

(9) other types of applications where a contested case hearing request has been filed but no opportunity for hearing is provided by law.

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

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TRD-201904018

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131, §50.139

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§50.131. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission. This subchapter does not affect the executive director's authority to act on an application where that authority is delegated elsewhere.

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 and to certifications of Water Quality Management Plan (WQMP) updates. [~~Applications that are administratively complete before September 1, 1999 are subject to Subchapter B of this chapter (relating to Action by the Commission).~~] Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

(4) district matters under Texas Water Code (TWC), Chapters 49 - 66;

(5) districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(6) extensions of time to commence or complete construction;

(7) industrial and hazardous waste permits;

(8) municipal solid waste permits;

(9) on-site wastewater disposal system permits;

(10) radioactive waste or radioactive material permits or licenses;

(11) underground injection control permits;

(12) water rights permits;

(13) wastewater permits;

(14) weather modification measures permits;

(15) driller licenses under TWC, Chapter 32;

(16) pump installer licenses under TWC, Chapter 33;

(17) irrigator or installer registrations under TWC, Chapter 34; and

(18) municipal management district matters under Texas Local Government Code, Chapter 375.

(c) In addition to those things excluded from coverage under §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by Rule) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under TWC, Chapters 49 - 66, as follows:

(A) an appeal under TWC, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC, §54.239, of a board decision involving the cost, purchase, or use of facilities; or

(E) an application under TWC, §54.030 for conversion of a district to a municipal utility district;

(5) actions of the executive director under Chapters 101, 111 - 115, 117, and 118 of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards

of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes);

(6) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(7) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

§50.139. Motion to Overturn Executive Director's Decision.

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion to overturn the executive director's action on an application or water quality management plan (WQMP) update certification. Regardless of [~~Notwithstanding~~] any other law, a state agency, except a river authority, may not file a motion to overturn the executive director's action on an application that was received by the commission on or after September 1, 2011 unless the state agency is the applicant. Wherever other commission rules refer to a "motion for reconsideration," that term should be considered interchangeable with the term "motion to overturn executive director's decision."

(b) A motion to overturn must be filed no later than 23 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director to the applicant and persons on any required mailing list for the action.

(c) A motion to overturn must be filed no later than 20 days after the date persons who timely commented on the WQMP update are notified of the response to comments and the certified WQMP update. A person is presumed to have been notified on the third day after the date the notice of the executive director's action is mailed by first class mail.

(d) An action by the executive director under this subchapter is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

(e) With the agreement of the parties or on their own motion, the commission or [~~of~~] the general counsel may, by written order, extend the period of time for filing motions to overturn and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director.

(f) Disposition of motion.

(1) Unless an extension of time is granted, if a motion to overturn is not acted on by the commission within 45 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director, the motion is denied.

(2) In the event of an extension, the motion to overturn is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director.

(g) When a motion to overturn is denied under subsection (f) of this section, a motion for rehearing does not need to be filed as a prerequisite for appeal. Section 80.272 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion to overturn is denied. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

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

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31.

Background and Summary of the Factual Basis for the Proposed Rules

The rules in Chapter 55, Subchapters A and B were initially adopted to be effective June 6, 1996 (May 28, 1996, issue of the *Texas Register* (21 TexReg 4742)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including those in Chapter 55, Subchapters A and B.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking would repeal obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and remove unnecessary sections from the commission's rules.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice require-

ments for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability date. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

Subchapter A: Applicability and Definitions

The commission proposes the repeal of §55.1 and §55.3. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter B: Hearing Requests, Public Comment

The commission proposes the repeal of §§55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Fiscal Note: Costs to State and Local Government

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

The proposed rulemaking would repeal rules in Chapter 55, Subchapters A and B regarding public participation because these rules are obsolete. The obsolete rules apply to certain permit applications that were administratively complete before September 1, 1999. HB 801 superseded the public participation rules in Chapter 55, Subchapters A and B for certain permit applications declared administratively complete on or after September 1, 1999. The rules that implemented HB 801 and subsequent rulemakings to implement legislation and commission policy nullified the rules that would be repealed.

The rules are proposed for repeal because the reviews of applications declared administratively complete prior to September 1, 1999, have been completed. The current requirements for public notice and participation in Chapter 55 and other chapters are not affected by this proposed rulemaking. No fiscal implications are anticipated for the state or units of local government.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the repeals will be to eliminate obsolete rules regarding the public participation requirements for certain permit applications.

The proposed repeals are not anticipated to result in fiscal implications for businesses or individuals. The rules are proposed for repeal because they have been obsolete since the commission completed its reviews of all of the applications declared administratively complete before September 1, 1999. The current requirements for public participation in Chapter 55 and other chapters are not affected by this proposed rulemaking. The proposed rulemaking does not remove or add fees and does not affect requirements for any regulated entities.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed repeals do not adversely affect a rural community in a material way for the first five years that the proposed repeals are in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed repeals are in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking would

repeal obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the

Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 is procedural in nature and will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

None of the sections proposed for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected if the commission repeals these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-119-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER A. APPLICABILITY AND DEFINITIONS

30 TAC §55.1, §55.3

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

§55.1. Applicability.

§55.3. Definitions.

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

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER B. HEARING REQUESTS, PUBLIC COMMENT

30 TAC §§55.21, 55.23, 55.25 - 55.27, 55.29, 55.31

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

§55.21. Requests for Contested Case Hearings, Public Comment.

§55.23. Request by Group or Association.

§55.25. Public Comment Processing.

§55.26. Hearing Request Processing.

§55.27. Commission Action on Hearing Request.

§55.29. Determination of Affected Person.

§55.31. Determination of Reasonableness of Hearing 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 E. PUBLIC COMMENT AND PUBLIC MEETINGS

30 TAC §55.154, §55.156

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §55.154 and §55.156.

If adopted, the amendments to §55.154(c), (c)(3), (e), and (f) and §55.156(a) and (c) will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is concurrently proposing to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapters 39, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the SIP are also necessary. Section 55.154 and §55.156 include text that is now obsolete, and this rulemaking will update or remove that text.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested

case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Federal Clean Air Act, §110(l)

All revisions to the SIP are subject to EPA's finding that the revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act, (74 United States Code (USC), §7410(l)). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

The commission proposes to make non-substantive changes, such as grammatical corrections. These changes are non-substantive and are not specifically discussed in this preamble.

Subchapter E: Public Comment and Public Meetings

§55.154, Public Meetings

The commission proposes to amend §55.154(c) and (e) to update the reference from the commission's Office of Public Assistance to commission's Office of the Chief Clerk. The commission proposes to amend §55.154(c)(3) and (4) to remove obsolete text because no applications filed prior to June 24, 2010 remain pending for commission review. The commission also proposes to amend §55.154(f) to replace the obsolete reference to a tape recording with a reference to an audio recording.

§55.156, Public Comment Processing

The commission proposes to amend §55.156(a) to remove the reference to the commission's Office of Public Assistance, which no longer exists. The commission proposes to amend §55.156(c) to update the reference from the commission's Office of Public Assistance to the director of the External Relations Division. In addition, the commission proposes to amend §55.156(f)(1) to remove obsolete text because no applications filed prior to June 24, 2010 remain pending for commission review.

Fiscal Note: Costs to State and Local Government

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

This rulemaking will amend §55.154 and §55.156 to remove obsolete text and update cross-references.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect. This rulemaking addresses the removal of obsolete text.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public

health and safety of the state or a sector of the state. The proposed amendments to §55.154 and §55.156 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do the amendments 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. Rather, this rulemaking removes obsolete text and updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain air quality permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments to §55.154 and §55.156 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to §55.154 and §55.156 are procedural in nature and will not burden private real property. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments to §55.154 and §55.156 will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-120-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are also proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation

plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §382.056.

§55.154. Public Meetings.

(a) A public meeting is intended for the taking of public comment, and is not a contested case under the Texas Administrative Procedure Act.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or the Office of the Chief Clerk [~~Office of Public Assistance~~] may hold public meetings. The executive director or the Office of the Chief Clerk [~~Office of Public Assistance~~] shall hold a public meeting if:

(1) the executive director determines that there is a substantial or significant degree of public interest in an application;

(2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held;

(3) for [~~applications filed on or after the effective date of this section, for~~] Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published; [~~applications filed before the effective date of this section for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title are governed by the rules as they existed immediately before the effective date of this section, and those rules are continued in effect for that purpose;~~]

(4) for applications [~~filed on or after the effective date of this section,~~] for Hazardous Air Pollutant permits subject to Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph [~~subparagraph~~] will be held after Notice of Application and Preliminary Decision is published; [~~applications filed before the effective date of this section for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title are governed by the rules as they existed immediately before the effective date of this section, and those rules are continued in effect for that purpose;~~] or

(5) when a public meeting is otherwise required by law.

(d) Notice of the public meeting shall be given as required by §39.411(d) or (g) of this title (relating to Text of Public Notice), as applicable.

(e) The applicant shall attend any public meeting held by the executive director or the Office of the Chief Clerk [~~Office of Public Assistance~~].

(f) An audio [~~A tape~~] recording or written transcript of the public meeting shall be made available to the public.

(g) The executive director will respond to comments as required by §55.156(b) and (c) of this title (relating to Public Comment Processing).

§55.156. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the executive director, the Office of Public Interest Counsel, [~~the Office of Public Assistance,~~] the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.

(b) If comments are received, the following procedures apply to the executive director.

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment, whether or not withdrawn, and specify if a comment has been withdrawn. Before any air quality permit application for a Prevention of Significant Deterioration or Nonattainment permit subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits) or for applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), filed on or after the effective date of this section, is approved, the executive director shall prepare a response to all comments received. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

(2) The executive director may call and conduct public meetings, under §55.154 of this title (relating to Public Meetings), in response to public comment.

(3) The executive director shall file the response to comments with the chief clerk within the shortest practical time after the comment period ends, not to exceed 60 days.

(c) After the executive director files the response to comments, the chief clerk shall mail (or otherwise transmit) the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing. The chief clerk shall provide the information required by this section to the applicant, any person who submitted comments during the public comment period, any person who requested to be on the mailing list for the permit action, any person who timely filed a request for a contested case hearing in response to the Notice of Receipt of Application and Intent to Obtain a Permit for an air application, the Office of Public Interest Counsel, and the director of the External Relations Division [~~Office of Public Assistance~~]. Instructions for requesting reconsideration of the executive director's decision or requesting a contested case hearing are not required to be included in this transmittal for the applications listed in:

(1) §39.420(e) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision); and

(2) §39.420(f) and (g) of this title.

(d) The instructions sent under §39.420(a) of this title regarding how to request a contested case hearing shall include at least the following statements, however, this subsection does not apply to post-closure order applications:

(1) a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(2) a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the gen-

eral public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(3) only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted for an application filed before September 1, 2015;

(4) only relevant and material disputed issues of fact and mixed questions of fact and law raised during the comment period by a hearing requestor who is an affected person and whose request is granted can be considered if a contested case hearing request is granted for an application filed on or after September 1, 2015; and

(5) a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(e) The instructions sent under §39.420(c) of this title regarding how to request a contested case hearing shall include at least the following statements:

(1) a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(2) a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(3) only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted for an application filed before September 1, 2015;

(4) only relevant and material disputed issues of fact and mixed questions of fact and law raised during the comment period by a hearing requestor who is an affected person and whose request is granted can be considered if a contested case hearing request is granted for an application filed on or after September 1, 2015; and

(5) a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(f) For applications referred to State Office of Administrative Hearings under §55.210 of this title (relating to Direct Referrals):

(1) for air quality permit applications [~~filed on or after June 24, 2010~~] subsections (c) and (d) of this section do not apply; and

(2) for all other permit applications, subsections (b)(2), (c), and (d) of this section do not apply.

(g) Regardless of [~~Notwithstanding~~] the requirements in §39.420 of this title, the commission shall make available by electronic means on the commission's website the executive director's decision and the executive director's response to public comments.

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

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Robert Martinez
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Texas Commission on Environmental Quality
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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§55.201, 55.209, 55.253, and 55.254.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references. Additionally, on August 14, 2019, the commission determined that the rules regarding voluntary emission reduction permits in 30 TAC Chapter 116 are also obsolete and no longer needed because the expiration dates and application deadlines in those rules have passed (August 30, 2019, issue of the *Texas Register* (44 TexReg 4750)). The repeal of the obsolete rules in Chapter 116, in which Revisions to the State Implementation Plan (SIP) are not necessary, will be addresses in a separate rulemaking (Rule Project Number 2020-001-116-AI).

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness.

The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Proposed amendments to §§55.201, 55.209, 55.253, and 55.254 would remove or update obsolete text.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the SIP are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes such as grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

Subchapter F: Requests for Reconsideration or Contested Case Hearing

§55.201, Requests for Reconsideration or Contested Case Hearing

The commission proposes to amend §55.201(i)(3)(A) to remove the reference to voluntary emission reduction permits because the commission no longer issues these permits.

§55.209, Processing Requests for Reconsideration and Contested Case Hearing

The commission proposes to amend §55.209(d) by updating the reference from the commission's Office of Public Assistance to the External Relations Division.

Subchapter G: Requests for Contested Case Hearing and Public Comment on Certain Applications

§55.253, Public Comment Processing

The commission proposes to amend §55.253(a) by removing the outdated reference to the commission's Office of Public Assistance, which no longer exists. In addition, the commission proposes to remove obsolete text in subsection (b)(1), and re-designate subsection (b)(1)(A) and (B) as subsection (b)(1) and (2). Additionally, the commission proposes to re-designate current subsection (b)(2) as subsection (c).

The commission also proposes to amend re-lettered §55.253(c) by updating the references from the commission's Office of Public Assistance and designated office to the Office of Chief Clerk or the executive director.

§55.254, Hearing Request Processing

The commission proposes to amend §55.254(e) by updating the reference from the commission's Office of Public Assistance to the External Relations Division.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will remove the obsolete text as mentioned in this preamble.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect. This rulemaking addresses the removal of obsolete text.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that

statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §§55.201, 55.209, 55.253, and 55.254 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking removes obsolete text to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments of §§55.201, 55.209, 55.253, and 55.254 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments of §§55.201, 55.209, 55.253, and 55.254 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Sections 55.201, 55.209, 55.253, and 55.254 are not applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201, §55.209

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous mu-

nicipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment, and, for applications filed on or after September 1, 2015, must be based only on the requestor's timely comments.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) for applications filed:

(A) before September 1, 2015, list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; or

(B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.

(e) Any person, other than a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title (relating to Definitions), may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, the public interest counsel, and a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of [~~a voluntary emission reduction permit or~~] an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program);

(C) a permit issued under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions); or

(D) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine from Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.025, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(8) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-injection Units Registration);

(9) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018;

(10) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law; and

(11) an application for a production area authorization, except as provided in accordance with §331.108 of this title (relating to Opportunity for a Contested Case Hearing on a Production Area Authorization Application).

§55.209. Processing Requests for Reconsideration and Contested Case Hearing.

(a) This section and §55.211 of this title (relating to Commission Action on Requests for Reconsideration or Contested Case Hearing) apply only to requests for reconsideration and contested case hearing that are timely filed.

(b) After the final deadline to submit requests for reconsideration or contested case hearing, the chief clerk shall process any requests for reconsideration or hearing by both:

(1) referring the application and requests for reconsideration or contested case hearing to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the requestors; and

(2) scheduling the hearing request and request for reconsideration for a commission meeting. However, if only a request for reconsideration is submitted and the commission has delegated its authority to act on the request to the general counsel, the request for reconsideration shall be scheduled for a commission meeting only if the general counsel directs the chief clerk to do so. The chief clerk should try to schedule the requests for a commission meeting that will be held approximately 44 days after the final deadline for timely filed requests for reconsideration or contested case hearing.

(c) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and all timely commenters and requestors at least 35 days before the first meeting at which the commission considers the requests. The notice shall explain how to participate in the commission decision, describe alternative dispute resolution under commission rules, and explain the relevant requirements of this chapter.

(d) The executive director, the public interest counsel, and the applicant may submit written responses to the requests no later than 23 days before the commission meeting at which the commission will evaluate the requests. Responses shall be filed with the chief clerk[~~,~~] and served on the same day to the executive director, the public interest counsel, the director of the External Relations Division [~~Office of Public Assistance~~], the applicant, and any requestors.

(e) Responses to hearing requests must specifically address:

(1) whether the requestor is an affected person;

(2) which issues raised in the hearing request are disputed;

(3) whether the dispute involves questions of fact or of law;

(4) whether the issues were raised during the public comment period;

(5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;

(6) whether the issues are relevant and material to the decision on the application; and

(7) a maximum expected duration for the contested case hearing.

(f) Responses to requests for reconsideration should address the issues raised in the request.

(g) The requestors may submit written replies to a response no later than nine days before the commission meeting at which the commission will evaluate the request for reconsideration and contested case hearing. A reply shall be filed with the chief clerk[~~,~~] and served on the same day to the executive director, the public interest counsel, and the applicant.

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 October 25, 2019.

TRD-201903918
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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SUBCHAPTER G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

30 TAC §55.253, §55.254

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§55.253. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the applicant, the executive director, the public interest counsel, [~~the Office of Public Assistance,~~] and the Alternative Dispute Resolution Office, copies of all documents filed with the chief clerk in response to public notice of an application.

(b) The commission may designate an agency office to process public comment under this subsection.

[~~(1) The Office of Public Assistance may evaluate and respond to public comment and hearing requests, when appropriate.~~]

(1) [~~(A)~~] If the application and timely hearing requests are considered by the commission, the designated office will prepare any required response to public comment, no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk.

(2) [~~(B)~~] If the application is approved by the executive director under Chapter 50, Subchapter G of this title (relating to Action by the Executive Director), any required response to public comment should be made no later than the time of the executive director's action on the application.

(c) [~~(2)~~] The Office of Chief Clerk or the executive director [~~Public Assistance~~] shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment[~~,~~] and is not a contested case under the APA. The applicant shall attend any such public meeting held by the Office of the Chief Clerk or the executive director. The executive director [~~designated office. When the designated office holds a public meeting it~~] shall respond to public comment either by giving an immediate oral response at the public meeting or by preparing a written response. The response shall be made available to the public.

§55.254. Hearing Request Processing.

(a) The requirements in this section and §55.255 of this title (relating to Commission Action on Hearing Request) apply only to hearing requests that are filed within the time period specified in §55.251(d) of this title (relating to Requests for Contested Case Hearing, Public Comment).

(b) The executive director shall file a statement with the chief clerk indicating that technical review of the application is complete. The executive director will file the statement with the chief clerk either before or after public notice of the application is issued.

(c) After a hearing request is filed and the executive director has filed a statement that technical review of the application is complete, the chief clerk shall process the hearing request by both:

(1) referring the application and hearing request to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the person making the request for hearing; and

(2) scheduling the hearing request for a commission meeting. The chief clerk shall attempt to schedule the request for a com-

mission meeting that will be held approximately 44 days after the later of the following:

(A) the deadline to request a hearing specified in the public notice of the application; or

(B) the date the executive director filed the statement that technical review is complete.

(d) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making a timely hearing request at least 35 days before the first meeting at which the commission considers the request. The chief clerk shall explain how the person may submit public comment to the executive director, describe alternative dispute resolution under commission rules, explain that the agency may hold a public meeting, and explain the requirements of this chapter.

(e) The executive director, the public interest counsel, and the applicant may submit written responses to the hearing request no later than 23 days before the commission meeting at which the commission will evaluate the hearing request. Responses shall be filed with the chief clerk, and served on the same day to the applicant, the executive director, the public interest counsel, the External Relations Division [~~Office of Public Assistance~~], and any persons filing hearing requests.

(f) The person who filed the hearing request may submit a written reply to a response no later than nine days before the scheduled commission meeting at which the commission will evaluate the hearing request. A reply may also contain additional information responding to the letter by the chief clerk required by subsection (d) of this section. A reply shall be filed with the chief clerk[~~,~~] and served on the same day to the executive director, the public interest counsel, and the applicant.

(g) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to the State Office of Administrative Hearings (SOAH)[~~SOAH~~] for a hearing on the application. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled. An application may only be sent to SOAH under this subsection if the executive director, the applicant, the public interest counsel and all timely hearing requestors agree on a list of issues and a maximum expected duration of the hearing.

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

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CHAPTER 60. COMPLIANCE HISTORY

30 TAC §60.1

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §60.1.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 60.1 is proposed to be amended by removing an obsolete cross-reference.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as grammatical corrections and correct use of reference. These changes are non-substantive and generally are not specifically discussed in this preamble.

§60.1, Compliance History

The commission proposes to amend §60.1(a)(8) by removing the references to §50.39 (Motion for Reconsideration).

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency

or for other units of state or local government as a result of administration or enforcement of the proposed rule.

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a rule reference due to concurrent proposed repeal of an obsolete rule.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the removal of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §60.1 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking removes an obsolete cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §60.1 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §60.1 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 60.1 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on applicable requirements is expected for sites subject to the Federal Operating Permits (FOP) program if the commission amends this rule. However, sites subject to the FOP program are subject to the requirements of Chapter 60 and permit holders should review any rule changes for how compliance history information may be used in agency processes.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §5.753, which authorizes the commission to develop standards for evaluating and using the compliance history; TWC, §5.754, which authorizes the commission to adopt rules that establish standards for classifications of compliance history; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 5.122, 5.753, 5.754, 26.011, and 27.019, and THSC, §361.024 and §382.011.

§60.1. Compliance History.

(a) Applicability. The provisions of this chapter are applicable to all persons subject to the requirements of Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361, 375, 382, and 401.

(1) Specifically, the agency will utilize compliance history when making decisions regarding:

(A) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(B) enforcement;

(C) the use of announced investigations; and

(D) participation in innovative programs.

(2) For purposes of this chapter, the term "permit" means licenses, certificates, registrations, approvals, permits by rule, standard permits, or other forms of authorization.

(3) With respect to authorizations, this chapter only applies to forms of authorization, including temporary authorizations, that require some level of notification to the agency, and which, after receipt by the agency, requires the agency to make a substantive review of and approval or disapproval of the authorization required in the notification or submittal. For the purposes of this rule, "substantive review of and approval or disapproval" means action by the agency to determine, prior to issuance of the requested authorization, and based on the notification or other submittal, whether the person making the notification has satisfied statutory or regulatory criteria that are prerequisites to issuance of such authorization. The term "substantive review or response" does not include confirmation of receipt of a submittal.

(4) Regardless of the applicability of [~~Notwithstanding~~] paragraphs (2) and (3) of this subsection, this chapter does not apply to certain permit actions such as:

(A) voluntary permit revocations;

(B) minor amendments and nonsubstantive corrections to permits;

(C) Texas pollutant discharge elimination system and underground injection control minor permit modifications;

(D) Class 1 solid waste modifications, except for changes in ownership;

(E) municipal solid waste Class I modifications, except for temporary authorizations and municipal solid waste Class I modifications requiring public notice;

(F) permit alterations;

(G) administrative revisions; and

(H) air quality new source review permit amendments which meet the criteria of §39.402(a)(3)(A) - (C) and (5)(A) - (C) of this title (relating to Applicability to Air Quality Permits and Permit Amendments) and minor permit revisions under Chapter 122 of this title (relating to Federal Operating Permits Program).

(5) Further, this chapter does not apply to occupational licensing programs under the jurisdiction of the commission.

(6) Not later than September 1, 2012, the executive director shall develop compliance histories with the components specified in this chapter. Prior to September 1, 2012, the executive director shall continue in effect the standards and use of compliance history for any action (permitting, enforcement, or otherwise) that were in effect before September 1, 2012.

(7) Beginning September 1, 2012, this chapter shall apply to the use of compliance history in agency decisions relating to:

(A) applications submitted on or after this date for the issuance, amendment, modification, or renewal of permits;

(B) inspections and flexible permitting;

(C) a proceeding that is initiated or an action that is brought on or after this date for the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission; and

(D) applications submitted on or after this date for other forms of authorization, or participation in an innovative program, except for flexible permitting.

(8) If a [~~motion for reconsideration or a~~] motion to overturn is filed under [~~§50.39 or~~] §50.139 of this title (relating to [~~Motion for Reconsideration; and~~] Motion to Overturn Executive Director's Decision) with respect to any of the actions listed in paragraph (4) of this subsection, and is set for commission agenda, a compliance history shall be prepared by the executive director and filed with the Office of the Chief Clerk no later than six days before the Motion is considered on the commission agenda.

(b) Compliance period. The compliance history period includes the five years prior to the date the permit application is received by the executive director; the five-year period preceding the date of initiating an enforcement action with an initial enforcement settlement offer or the filing date of an Executive Director's Preliminary Report, whichever occurs first; for purposes of determining whether an announced investigation is appropriate, the five-year period preceding an investigation; or the five years prior to the date the application for participation in an innovative program is received by the executive director. The compliance history period may be extended beyond the date the application for the permit or participation in an innovative program is received by the executive director, up through completion of review of the application. Except as used in §60.2(f) of this title (relating to Classification) for determination of repeat violator, notices of violation may only be used as a component of compliance history for a period not to exceed one year from the date of issuance.

(c) Components. The compliance history shall include multimedia compliance-related information about a person, specific to the site which is under review, as well as other sites which are owned or operated by the same person. The components are:

(1) any final enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under the jurisdiction of the commission. "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement;

(2) regardless of [~~notwithstanding~~] any other provision of the TWC, orders developed under TWC, §7.070 and approved by the commission on or after February 1, 2002;

(3) to the extent readily available to the executive director, final enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental rules of the United States Environmental Protection Agency;

(4) chronic excessive emissions events. For purposes of this chapter, the term "emissions event" is the same as defined in THSC, §382.0215(a);

(5) any information required by law or any compliance-related requirement necessary to maintain federal program authorization;

(6) the dates of investigations;

(7) all written notices of violation for a period not to exceed one year from the date of issuance of each notice of violation, including written notification of a violation from a regulated person, issued on or after September 1, 1999, except for those administratively determined to be without merit;

(8) the date of letters notifying the executive director of an intended audit conducted and any violations disclosed and having received immunity under the Texas Environmental, Health, and Safety Audit Privilege Act (Audit Act), 75th Legislature, 1997, TEX. REV. CIV. STAT. ANN. art. 4447cc (Vernon's);

(9) an environmental management system approved under Chapter 90 of this title (relating to Innovative Programs), if any, used for environmental compliance;

(10) any voluntary on-site compliance assessments conducted by the executive director under a special assistance program;

(11) participation in a voluntary pollution reduction program; and

(12) a description of early compliance with or offer of a product that meets future state or federal government environmental requirements.

(d) Change in ownership. In addition to the requirements in subsections (b) and (c) of this section, if ownership of the site changed during the five-year compliance period, a distinction of compliance history of the site under each owner during that five-year period shall be made. Specifically, for any part of the compliance period that involves a previous owner, the compliance history will include only the site under review. For the purposes of this rule, a change in operator shall be considered a change in ownership if the operator is a co-permittee.

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 October 25, 2019.

TRD-201903920
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 70. ENFORCEMENT
SUBCHAPTER C. ENFORCEMENT REFERRALS TO SOAH

30 TAC §70.109

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §70.109.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 70.109 is proposed to be amended by updating a cross-reference.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§70.109, Referral to SOAH

The commission proposes to amend §70.109 by updating the cross-reference from §80.5, which is concurrently proposed for repeal, to §80.6.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the update of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not

create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §70.109 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking removes an obsolete cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §70.109 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b). Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §70.109 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 70.109 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on applicable requirements is expected for sites subject to the Federal Operating Permits (FOP) program if the commission amends this rule. However, sites subject to the FOP program are still subject to the requirements of Chapter 70 and permit holders should review any rule changes for how they may affect site operations.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the

quality of water in the state of Texas; TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells; and TWC, Chapter 7, which provides the commission's enforcement authority. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; TWC, Chapter 7; and THSC, §361.024 and §382.011.

§70.109. Referral to SOAH.

Not less than 30 days after the respondent has filed an answer under §70.105 of this title (relating to Answer), either the respondent or the executive director may request that the chief clerk refer the case to the State Office of Administrative Hearings (SOAH) [~~SOAH~~] for a contested enforcement case hearing. The parties may request this referral by filing a letter with the chief clerk and serving that letter on the other parties. If the chief clerk receives authorization to refer a case to SOAH, the chief clerk shall refer the case to SOAH under §80.6 [~~§80.5~~] of this title (relating to Referral to SOAH).

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

Filed with the Office of the Secretary of State on October 25, 2019.

TRD-201903921
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§80.3, 80.5, and 80.251.

Background and Summary of the Factual Basis for the Proposed Rules

Sections 80.3, 80.5, and 80.251 were initially adopted to be effective June 6, 1996, (May 28, 1996, issue of the *Texas Register* (21 TexReg 4763)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including §§80.3, 80.5, and 80.251.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking would repeal obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and remove unnecessary sections from the commission's rules.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability date. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

Subchapter A: General Rules

§80.3, Judges

The commission proposes the repeal of §80.3. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

§80.5, Referral to SOAH

The commission proposes the repeal of §80.5. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter F: Post Hearing Procedures

§80.251, Judge's Proposal for Decision

The commission proposes the repeal of §80.251. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed repeals are in effect, no fiscal implications are anticipated for the agency

or for other units of state or local government as a result of administration or enforcement of the proposed repeals.

The proposed rulemaking would repeal §§80.3, 80.5, and 80.251 regarding contested case hearings because these rules are obsolete. The obsolete rules apply to certain permit applications that were administratively complete before September 1, 1999. HB 801 superseded the requirements in §§80.3, 80.5, and 80.251 for certain permit applications declared administratively complete on or after September 1, 1999. The rules that implemented HB 801 and subsequent rulemakings to implement legislation and commission policy nullified the rules that are proposed for repeal.

The rules are proposed for repeal because the reviews of applications declared administratively complete prior to September 1, 1999, have been completed. The current requirements for public notice and participation in Chapter 80 and other chapters are not affected by this proposed rulemaking. No fiscal implications are anticipated for the state or units of local government.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the repeals will be to eliminate obsolete rules regarding the public participation requirements for certain permit applications.

The proposed repeals are not anticipated to result in fiscal implications for businesses or individuals. The rules are proposed for repeal because they have been obsolete since the commission completed its reviews of all of the applications declared administratively complete before September 1, 1999. The current requirements for contested case hearings in Chapter 80 and other chapters are not affected by this proposed rulemaking. The proposed rulemaking does not remove or add fees and does not affect requirements for any regulated entities.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed repeals do not adversely affect a rural community in a material way for the first five years that the proposed repeals are in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed repeals are in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a 'Major environmental rule' as defined in that statute. A 'Major environmental rule' is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed repeal of §§80.3, 80.5, and 80.251 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking would repeal obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed repeal of §§80.3, 80.5, and 80.251 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed repeal of §§80.3, 80.5, and 80.251 is procedural in nature and will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to

the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

None of the sections proposed for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected if the commission repeals these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-119-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER A. GENERAL RULES

30 TAC §80.3, §80.5

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

§80.3. Judges.

§80.5. Referral to SOAH.

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

Filed with the Office of the Secretary of State on October 25, 2019.

TRD-201903958
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-6812

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SUBCHAPTER F. POST HEARING PROCEDURES

30 TAC §80.251

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeal is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's

authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

§80.251. Judge's Proposal for Decision.

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

Filed with the Office of the Secretary of State on October 25, 2019.

TRD-201903959
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-6812

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CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§80.109, 80.117, 80.118, and 80.151.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or submstantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Proposed amendments to Chapter 80 would remove obsolete text and update text to ensure statutory consistency.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

§80.109, Designation of Parties

The commission proposes to amend §80.109(b)(5) by removing a cross-reference to §55.29 (Determination of Affected Person), which is concurrently proposed for repeal.

§80.117, Order of Presentation

The commission proposes to amend §80.117(c)(1)(B) to correct a drafting error to ensure the rule is consistent with the statute, Texas Government Code, §2003.047(i-1)(2), added by Senate Bill (SB) 709 (84th Texas Legislature, 2015). Rulemaking to implement SB 709, including the amendment to §80.117, was adopted by the commission on December 9, 2015, *Texas Register* (40 TexReg 9641).

§80.118, Administrative Record

The commission proposes to amend §80.118(b) by removing a cross-reference to §80.5 (Referral to SOAH), which is concurrently proposed for repeal.

§80.151, Discovery Generally

The commission proposes to amend §80.151 by removing §80.151(b)(1)(A) and re-lettering subsequent subparagraphs (B) and (C).

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters, will update cross-references of rules related to public participation regarding certain types of permit applications.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation

regarding certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. These changes will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect. This rulemaking addresses necessary changes in order to update cross-references.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §§80.109, 80.118, and 80.151 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments of §§80.109, 80.118, and 80.151 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments of §§80.109, 80.118, and 80.151 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Sections 80.109, 80.118, and 80.151 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:*https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER C. HEARING PROCEDURES

30 TAC §§80.109, 80.117, 80.118

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.115, which provides authority regarding persons affected in commission hearings; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§80.109. Designation of Parties.

(a) Determination by judge. All parties to a proceeding shall be determined at the preliminary hearing or when the judge otherwise designates. To be admitted as a party, a person must have a justiciable interest in the matter being considered and must, unless the person is specifically named in the matter being considered, appear at the preliminary hearing in person or by representative and seek to be admitted as a party. After parties are designated, no person will be admitted as a party except upon a finding that good cause and extenuating circumstances exist and that the hearing in progress will not be unreasonably delayed.

(b) Parties.

(1) The executive director is a mandatory party to all commission proceedings concerning matters in which the executive director bears the burden of proof, and in the following commission proceedings:

(A) matters concerning Texas Water Code (TWC), §11.036 and §11.041; TWC, Chapters 13, 35, 36, and 49 - 66; and Texas Local Government Code, Chapters 375 and 395;

(B) matters arising under Texas Government Code, Chapter 2260 and Chapter 11, Subchapter D of this title (relating to Resolution of Contract Claims); and

(C) matters under TWC, Chapter 26, Subchapter I, and Chapter 334, Subchapters H and L of this title (relating to Reimbursement Program and Overpayment Prevention).

(2) In addition to paragraph (1) of this subsection, the executive director is always a party in contested case hearings concerning permitting matters, pursuant to, and in accordance with, the provisions of §80.108 of this title (relating to Executive Director Party Status in Permit Hearings).

(3) The public interest counsel of the commission is a party to all commission proceedings.

(4) The applicant is a party in a hearing on its application.

(5) Affected persons shall be parties to hearings on permit applications, based upon the standards set forth in [~~§55.29 and~~] §55.203 of this title (relating to Determination of Affected Person). Regardless of any other law, a state agency, except a river authority, may not be a party to a hearing on an application received by the commission on or after September 1, 2011 unless the state agency is the applicant.

(6) The parties to a contested enforcement case include:

(A) the respondent(s);

(B) any other parties authorized by statute; and

(C) in proceedings alleging a violation of or failure to obtain an underground injection control or Texas Pollutant Discharge Elimination System permit, or a state permit for the same discharge covered by a National Pollutant Discharge Elimination System (NPDES) permit that has been assumed by the state under NPDES authorization, any other party granted permissive intervention by the judge. In exercising discretion whether to permit intervention, the

judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(7) The parties to a hearing upon a challenge to commission rules include the person(s) challenging the rule and any other parties authorized by statute.

(8) The parties to a permit revocation action initiated by a person other than the executive director shall include the respondent and the petitioner.

(9) The parties to a post-closure order contested case are limited to:

(A) the executive director;

(B) the applicant(s); and

(C) the Public Interest Counsel.

(c) Alignment of participants. Participants (both party and non-party) may be aligned according to the nature of the proceeding and their relationship to it. The judge may require participants of an aligned class to select one or more persons to represent them in the proceeding. Unless otherwise ordered by the judge, each group of aligned participants shall be considered to be one party for the purposes of §80.115 of this title (relating to Rights of Parties) for all purposes except settlement.

(d) Effect of postponement. If a hearing is postponed for any reason, any person already designated as a party retains party status.

§80.117. Order of Presentation.

(a) In all proceedings, the moving party has the right to open and close. Where several matters have been consolidated, the judge will designate who will open and close. The judge will determine at what stage other parties will be permitted to offer evidence and argument. After all parties have completed the presentation of their evidence, the judge may call upon any party for further material or relevant evidence upon any issue.

(b) The applicant shall present evidence to meet its burden of proof on the application, followed by the protesting parties, the public interest counsel, and the executive director. In all cases, the applicant shall be allowed a rebuttal. Any party may present a rebuttal case when another party presents evidence that could not have been reasonably anticipated. For applications subject to subsection (c) of this section, the applicant's presentation of evidence to meet its burden of proof may consist solely of the filing with the State Office of Administrative Hearings (SOAH), and admittance by the judge, of the administrative record as described in subsection (c) of this section.

(c) For contested cases regarding a permit application filed on or after September 1, 2015, and referred to SOAH under Texas Water Code, §5.556 or §5.557:

(1) The filing of the administrative record as described in §80.118(c) of this title (relating to Administrative Record) establishes a prima facie demonstration that:

(A) the draft permit meets all applicable state and federal legal and technical requirements; and

(B) a [~~the~~] permit, if issued [~~by the commission is~~] consistent with the draft permit in the administrative record, would protect human health and safety, the environment, and physical property.

(2) The applicant, protesting parties, the public interest counsel, and the executive director may present evidence after admittance of the administrative record by the judge.

(3) Any party may present evidence to rebut the prima facie demonstration by demonstrating that one or more provisions in the draft permit violate a specifically applicable state or federal requirement that relates to a matter directly referred to SOAH or referred by the commission. If the prima facie demonstration is rebutted, the applicant or the executive director may present additional evidence to support the executive director's draft permit.

(d) In all contested enforcement case hearings, the executive director has the right to open and close. In all such cases, the executive director shall be allowed to close with his rebuttal.

§80.118. Administrative Record.

(a) Except as provided in subsection (c) of this section, in all permit hearings, the record in a contested case includes, at a minimum, the following certified copies of documents:

(1) the executive director's final draft permit, including any special provisions or conditions;

(2) the executive director's preliminary decision, or the executive director's decision on the permit application, if applicable;

(3) the summary of the technical review of the permit application;

(4) the compliance summary of the applicant;

(5) copies of the public notices relating to the permit application, as well as affidavits regarding public notices; and

(6) any agency document determined by the executive director to be necessary to reflect the administrative and technical review of the application.

(b) For purposes of referral to the State Office of Administrative Hearings (SOAH) under [~~§80.5 and~~] §80.6 of this title (Referral to SOAH), of applications filed before September 1, 2015, or applications not referred under Texas Water Code, §5.556 or §5.557, the chief clerk's case file shall contain the administrative record as described in subsection (a) of this section.

(c) In all hearings on permit applications filed on or after September 1, 2015, which are referred for hearing under Texas Water Code, §5.556 or §5.557, the administrative record in a contested case filed by the chief clerk with SOAH includes the following certified copies of documents:

(1) the items in subsection (a)(1) - (6) of this section, including technical memoranda, that demonstrate the draft permit meets all applicable requirements and, if issued, would protect human health and safety, the environment, and physical property; and

(2) the application submitted by the applicant, including revisions to the original submittal.

(d) For purposes of referral to SOAH under §80.6 of this title for hearings regarding permit applications filed on or after September 1, 2015, that are referred under Texas Water Code, §5.556 and §5.557, the applicant shall provide two duplicates of the original application, including all revisions to the application, to the chief clerk for inclusion in the administrative record in the format and time required by the procedures of the commission, no later than:

(1) for applications referred by the commission, 10 days after the chief clerk mails the commission order; or

(2) for applications referred by the applicant or executive director, 10 days after the chief clerk mails the executive director's response to comments.

(e) For purposes of referral to SOAH under §80.6 of this title for hearings regarding permit applications filed on or after September 1, 2015, that are referred under Texas Water Code, §5.556 and §5.557, the chief clerk shall file the administrative record with SOAH at least 30 days prior to the hearing.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER D. DISCOVERY

30 TAC §80.151

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.115, which provides authority regarding persons affected in commission hearings; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§80.151. Discovery Generally.

(a) Discovery shall be conducted according to the Texas Rules of Civil Procedure, unless commission rules provide or the judge orders otherwise. The Texas Rules of Civil Procedure shall be interpreted consistently with this chapter, the Texas Water Code, the Texas Health and Safety Code, and the Texas Administrative Procedures Act [~~APA~~]. Drafts of prefiled testimony are not discoverable.

(b) Discovery in contested case hearings using prefiled testimony.

(1) This subsection is applicable to contested case hearings for applications which are subject to the jurisdiction of the State Office of Administrative Hearings (SOAH) under 1 TAC §155.151 (relating to Jurisdiction), except for:

[~~(A) contested case hearings using prefiled testimony where all discovery was completed before September 1, 2011;~~]

(A) [~~(B)~~] water ratemaking proceedings; and

(B) [~~(C)~~] sewer ratemaking proceedings.

(2) All discovery on a party must be completed before the deadline for that party to submit its prefiled testimony.

(3) In cases where all parties share the same deadline for submission of prefiled testimony, a single deadline for completion of discovery shall apply to all parties.

(4) If parties have different deadlines for the submission of prefiled testimony, the deadline to complete discovery on a party shall be no later than the final deadline for that party to submit prefiled testimony. After a party's final deadline to submit its prefiled testimony in a contested case, that party is no longer subject to discovery from other parties in the case.

(5) The requirements of this subsection do not relieve a party's duty to supplement its discovery responses as required by Texas Rules of Civil Procedure §193.5 and §195.6.

(c) All other contested case hearings are governed by this section as it existed immediately before the effective date of this section and the rule is continued in effect for that purpose.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 90. INNOVATIVE PROGRAMS

SUBCHAPTER A. INCENTIVE PROGRAMS

30 TAC §90.22

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §90.22.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 90.22 is proposed to be amended by updating a cross-reference.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§90.22, Commission Action on an Application

The commission proposes to amend §90.22(a) by updating a cross-reference from Chapter 50, Subchapter B to Chapter 50, Subchapter F.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The rule applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. This rulemaking addresses the update of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health

and safety of the state or a sector of the state. The proposed amendment of §90.22 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking removes an obsolete cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §90.22 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §90.22 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 90.22 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapters M and Q; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.115, which provides authority regarding persons affected in commission hearings; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters M and Q; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§90.22. Commission Action on an Application.

(a) Commission action on an application under this chapter shall comply with the provisions set forth in Chapter 50, Subchapter F [B] of this title (relating to Action by the Commission), as applicable.

(b) The commission may consider in its decision, among other factors, the applicant's compliance history and efforts made to involve the local community and achieve local community support.

(c) The commission's order must provide a description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.

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

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CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 1. EMISSION CREDIT PROGRAM

30 TAC §101.306

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §101.306, concerning Emission Credit Use.

If adopted, the amendment to §101.306 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is concurrently proposing to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is proposing amendments to Chapters 39, 55, and 116 to make necessary changes due to the proposed repeals for which revisions to the SIP are also necessary. Section 101.306 includes references to procedural mechanisms that are now obsolete, and this rulemaking will update cross-references to current applicable rules.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Federal Clean Air Act, §110(l)

All revisions to the SIP are subject to EPA's finding that the revision will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act (74 United States Code (USC), §7410(l)). This statute has been interpreted to be whether the revision will make air quality worse *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section Discussion

Subchapter H: Emissions Banking and Trading

Division 1: Emission Credit Program

§101.306, Emission Credit Use

The commission proposes to amend §101.306(c)(2) to update the cross-references to 30 TAC Chapter 50.

Fiscal Note: Costs to State and Local Government

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

update cross-references in §101.306(c)(2) due to the repeal of rules in Chapter 50.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from these changes will be to improve readability and minimize confusion with regard to applicable rules.

The proposed rule is not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The rule applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. These changes will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a Major environmental rule as defined in that statute. A Major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to §101.306 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §101.306 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment to §101.306 is procedural in nature and will not burden private real property. The proposed amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposed rule is identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 101.306 is an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program). However, the proposed amendment to update cross-references is procedural in nature and therefore no effect on sites subject to the Federal Operating Permits Program is expected if the commission amends this rule. The proposed amendment will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-120-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.122, which authorizes the commission to delegate to the executive director the authority to act on an application. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. In addition, the amendment is also proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements TWC, §5.122; and THSC, §382.011 and §382.012.

§101.306. Emission Credit Use.

(a) Uses for emission credits. Unless precluded by a commission order or a condition or conditions within an authorization under the same commission account number, emission credits may be used as the following:

(1) offsets for a new source, as defined in §101.1 of this title (relating to Definitions), or major modification to an existing source;

(2) mitigation offsets for action by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans;

(3) an alternative means of compliance with volatile organic compound and nitrogen oxides reduction requirements to the extent allowed in Chapters 115 and 117 of this title (relating to Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds);

(4) reductions certified as emission credits may be used in netting by the original applicant, if not used, sold, reserved for use, or otherwise relied upon, as provided by Chapter 116, Subchapter B of this title (relating to New Source Review Permits); or

(5) compliance with other requirements as allowed in any applicable local, state, and federal requirement.

(b) Credit use calculation.

(1) The number of emission credits needed by the user for offsets shall be determined as provided by Chapter 116, Subchapter B of this title.

(2) For emission credits used in compliance with Chapter 115 or 117 of this title, the number of emission credits needed should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.
Figure: 30 TAC §101.306(b)(2) (No change.)

(3) For emission credits used to comply with §§117.123, 117.320, 117.323, 117.423, 117.1020, or 117.1220 of this title (relating to Source Cap; and System Cap), the number of emission credits needed for increasing the 30-day rolling average emission cap or maximum daily cap should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.
Figure: 30 TAC §101.306(b)(3) (No change.)

(4) Emission credits used for compliance with any other applicable program should be determined in accordance with the requirements of that program and must contain at least 10% extra to be retired as an environmental contribution, unless otherwise specified by that program.

(c) Notice of intent to use emission credits.

(1) The executive director will not accept an application to use emission credits before the emission credit is available in the compliance account for the site where it will be used. If the emission credit will be used for offsets, the executive director will not accept the emission credit application before the applicable permit application is administratively complete.

(A) The user shall submit a completed application at least 90 days before the start of operation for an emission credit used as offsets in a permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(B) The user shall submit a completed application at least 90 days before the planned use of an emission credit for compliance with the requirements of Chapter 115 or 117 of this title or other programs.

(C) If the executive director approves the emission credit use, the date the application is submitted will be considered the date the emission credit is used.

(2) If the executive director denies the facility or mobile source's use of emission credits, any affected person may file a motion to overturn [~~for reconsideration~~] within 60 days of the denial. Regardless of [~~Notwithstanding~~] the applicability provisions of §50.131(c)(5) [~~§50.31(c)(7)~~] of this title (relating to Purpose and Applicability), the requirements of §50.139 [~~§50.39~~] of this title (relating to Motion to Overturn Executive Director's Decision [~~for Reconsideration~~]) shall apply. Only an affected person may file a motion to overturn [~~for reconsideration~~].

(d) Inter-pollutant use of emission credits. With prior approval from the executive director and the United States Environmental Protection Agency, a nitrogen oxides or volatile organic compound emissions credit may be used to meet the offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

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 October 25, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.111, §116.112

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §116.111, concerning General Application, and §116.112, concerning Distance Limitations.

If adopted, the amendments to §116.111 and §116.112(a) will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is concurrently proposing to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is proposing amendments to Chapters 39, 55, and 101 to make necessary changes due to the proposed repeals for which revisions to the SIP are also necessary. Section 116.111 and §116.112 include text that is now obsolete, and this rulemaking will update or remove that text and update cross-references to current applicable rules.

Concurrently with this rulemaking, the commission is proposing amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Federal Clean Air Act, §110(l)

All revisions to the SIP are subject to EPA's finding that the revision will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act (74 United States Code (USC), §7410(l)). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

The commission proposes to make non-substantive changes, such as grammatical corrections. These changes are non-substantive and are not specifically discussed in this preamble.

Subchapter B: New Source Review Permits

Division 1: Permit Application

§116.111, General Application

The commission proposes to remove obsolete text in §116.111(b) referring to requirements for applications declared administratively complete before September 1, 1999. Portions of §116.111(b)(2) will be re-designated as §116.111(c).

§116.112, Distance Limitations

The commission proposes to remove the obsolete text in §116.112(a) which references Chapter 39, Subchapters A and D, which are concurrently proposed for repeal.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. This rulemaking will remove obsolete language in §116.111 and §116.112 due to the repeal of rules in Chapter 39.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from these changes will be to improve readability and minimize confusion with regard to applicable rules. This will be achieved by the removal of obsolete language.

The proposed rules are not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rules apply state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. These changes will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to remove text in §116.111 and §116.112 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does the rulemaking 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. Rather, this rulemaking removes obsolete text and proposes that EPA approve the rules as revisions to the SIP to ensure there is no confusion regarding the applicable rules for public participation for air quality permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule

is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments to §116.111 and §116.112 do not exceed an express requirement of state law or a requirement of a delegation agreement, and the amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment to remove text in §116.111 and §116.112 is procedural in nature and will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the rules are identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 116.111 and §116.112 are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program). However, the text proposed to be removed from §116.111 and §116.112 is procedural in nature and therefore no effect on sites subject to the Federal Operating Permits Program is expected if the commission amends these rules. The proposed amendments will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-120-039-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are also proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission; and the Federal Clean Air Act, 42 United States Code, §§7401,

et seq., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §382.056.

§116.111. General Application.

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and property of the public.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Commission on Environmental Quality Sampling Procedures Manual."

(C) Best available control technology (BACT) must be evaluated for and applied to all facilities subject to the TCAA. Prior to evaluation of BACT under the TCAA, all facilities with pollutants subject to regulation under the Federal Clean Air Act (FCAA), Title I, Part C [~~of the Federal Clean Air Act (FCAA)~~] shall evaluate and apply BACT as defined in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements).

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review.

(i) If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(ii) If the proposed facility or modification meets or exceeds the applicable greenhouse gases thresholds defined in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources) then it shall comply with all applicable requirements in this chapter concerning PSD review for sources of greenhouse gases.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(L) Mass cap and trade allowances. If subject to Chapter 101, Subchapter H, Division 3[,] of this title (relating to Mass Emissions Cap and Trade Program), the proposed facility, group of facilities, or account must obtain allowances to operate.

(b) In order to be granted a permit, amendment, or special permit amendment, the applicant [~~owner or operator~~] must comply with [~~the following notice requirements.~~]

[~~(1) Applications declared administratively complete before September 1, 1999, are subject to the requirements of Division 3 of this subchapter (relating to Public Notification and Comment Procedures).~~]

[~~(2) Applications declared administratively complete on or after September 1, 1999, are subject to~~] the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Request for Reconsideration and Contested Case Hearings; Public Comment).

(c) Upon request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

§116.112. Distance Limitations.

(a) For any facility subject to the notice and hearing requirements of Subchapter B, Division 3 of this chapter (relating to Public Notification and Comment Procedures); Chapter 39, Subchapter H or K [~~Subchapters A, D, H, or K~~] of this title (relating to [~~Applicability and General Provisions, Public Notice of Air Quality Applications,~~] Applicability and General Provisions[~~,~~] and Public Notice of Air Quality Applications); or Chapter 122, Subchapter D of this title (relating to Public Announcement, Public Notice, Affected State Review, Notice and Comment Hearing, Notice of Proposed Final Action, EPA Review, and Public Petition), the measurement of distances to determine compliance with any location or distance limitation requirement in Texas Health and Safety Code, Chapter 382, shall be taken toward structures that are in use at the time the permit application is filed with the commission, and that are not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.

(b) The following facilities must satisfy the following distance criteria.

(1) Lead smelters. New lead smelting plants shall be located at least 3,000 feet from any individual's residence where lead smelting operations have not been conducted before August 31, 1987. This subsection does not apply to:

(A) a modification of a lead smelting plant in operation on or before August 31, 1987;

(B) a new lead smelting plant or modification of a plant with the capacity to produce 200 pounds or less of lead per hour; or

(C) a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations.

(2) Concrete crushing facilities. A concrete crushing facility must not be operated within 440 yards of any building in use as a single or multi-family residence, school, or place of worship at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission.

(A) The measurement of distances shall be taken from the point on the concrete crushing facility nearest to the residence, school, or place of worship to the point on the building in use as a residence, school, or place of worship that is nearest the concrete crushing facility.

(B) The minimum distance limitation and measurement requirements of this paragraph do not apply to concrete crushing facilities that were authorized to operate at the site as of September 1, 2001.

(C) Unless the facility is located in, or located in a county adjacent to, a county with a population of 2.4 million or more, the minimum distance limitation and measurement requirements of this paragraph do not apply to facilities operated on a site during one period of no more than 180 calendar days that crush concrete resulting from the demolition of a structure on that site for use primarily at that site, and which comply with all applicable conditions stated in commission rules, including operating conditions.

(D) The minimum distance limitation and measurement requirements of this paragraph do not apply to structures occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.

(c) For applicable distance limitations at hazardous waste management facilities, see §335.204 of this title (relating to Unsuitable Site Characteristics), as amended and adopted in the August 22, 2003 issue of the *Texas Register* (28 TexReg 6915), and §335.205 of this title (relating to Prohibition of Permit Issuance), as amended and adopted in the November 9, 2001 issue of the *Texas Register* (26 TexReg 9135).

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 October 25, 2019.

TRD-201903966
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-6812

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CHAPTER 205. GENERAL PERMITS FOR WASTE DISCHARGES

SUBCHAPTER A. GENERAL PERMITS FOR WASTE DISCHARGES

30 TAC §205.3

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §205.3.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications

that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 205.3 is proposed to be amended by updating obsolete cross-references.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§205.3, Public Notice, Public Meetings, and Public Comment

The commission proposes to amend §205.3(c)(1) and (d)(4) to update the cross-reference from §39.11, which is concurrently proposed for repeal, to §39.411.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. This rulemaking addresses the removal of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §205.3 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §205.3 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §205.3 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 205.3 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; TWC, §26.040, which authorizes the commission to adopt rules for general permits to authorize discharge of wastes; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 26.040.

§205.3. Public Notice, Public Meetings, and Public Comment.

(a) Notice shall be published as follows.

(1) If the draft general permit will not have statewide applicability, the agency shall publish notice of each draft general permit in the *Texas Register* and in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit.

(2) For draft general permits with statewide applicability, notice shall be published in the *Texas Register* and in at least one newspaper of statewide or regional circulation.

(3) The public notice shall be published not later than the 30th day before the commission considers the approval of a general permit.

(b) For Texas Pollutant Discharge Elimination System general permits, mailed notice of the draft general permit will also be provided to the following:

(1) the county judge of the county or counties in which the dischargers under the general permit could be located;

(2) if applicable, persons for which notice is required in 40 Code of Federal Regulations (CFR)[~~,~~] §124.10(c); and

(3) any other person the executive director or chief clerk may elect to include.

(c) The contents of a public notice of a draft general permit shall:

(1) include the applicable information described in §39.411 [~~§39.11~~] of this title (relating to Text of Public Notice);

(2) include an invitation for written comments by the public regarding the draft general permit;

(3) specify a comment period of at least 30 days; and

(4) include either a map or description of the permit area.

(d) Requirements relating to public meetings are as follows.

(1) The agency may hold a public meeting to provide an additional opportunity for public comment and shall hold such a public meeting when the executive director determines, on the basis of requests, that a significant degree of public interest in a draft general permit exists.

(2) Notice of a public meeting shall be by publication in the *Texas Register* not later than the 30th day before the date of the meeting.

(3) Notice of the public meeting shall be mailed to the following:

(A) the county judge of the county or counties in which the dischargers under the general permit could be located;

(B) if applicable, persons for which notice is required in 40 CFR[~~,~~] §124.10(c);

(C) any other person the executive director or chief clerk may elect to include; and

(D) persons who filed public comment or request for a public meeting on or before the deadline for filing public comment or request for a public meeting.

(4) The contents of a public notice of a public meeting shall include the applicable information described in §39.411 [~~§39.11~~] of this title [~~(relating to Text of Public Notice)~~]. Each notice must include an invitation for written or oral comments by the public regarding the draft general permit.

(5) The public comment period shall automatically be extended to the close of any public meeting held by the agency on the proposed general permit.

(e) If the agency receives public comment during the comment period relating to issuance of a general permit, the executive director shall respond in writing to these comments, and this response shall be made available to the public and filed with the chief clerk at least ten days before the commission considers the approval of the general permit. The response shall address written comments received during the comment period and oral or written comments received during any public meeting held by the agency. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(1) The commission shall issue its written response to comments on the general permit at the same time the commission issues or denies the general permit.

(2) A copy of any issued general permit and response to comments shall be made available to the public for inspection at the agency's Austin office and also in the appropriate regional offices.

(3) A notice of the commission's action on the proposed general permit and a copy of its response to comments shall be mailed to each person who made a comment.

(4) A notice of the commission's action on the proposed general permit and the text of its response to comments shall be published in the *Texas Register* .

(f) Except as specified in subsection (g) of this section, the requirements of subsections (a) - (e) of this section apply to processing of a new general permit, an amendment, renewal, revocation, or cancellation of a general permit.

(g) A general permit may be proposed for minor amendment or minor modification, as described in §305.62(c) of this title (relating to Amendment), without newspaper publication

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 October 25, 2019.

TRD-201903925
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 285. ON-SITE SEWAGE FACILITIES
SUBCHAPTER B. LOCAL ADMINISTRATION OF THE OSSF PROGRAM

30 TAC §285.10

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §285.10, concerning Delegation to Authorized Agents.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 285.10 is proposed to be amended by updating an obsolete cross-reference.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

The commission proposes to make stylistic, non-substantive changes, such as grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

§285.10, Delegation to Authorized Agents

The commission proposes to amend §285.10(b)(9) to update the cross-reference from §50.39, which is concurrently proposed for repeal, to §50.139 (Motion to Overturn Executive Director's Decision).

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the removal of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §285.10 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an

agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §285.10 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §285.10 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 285.10 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas. The amendment is also proposed under Texas Health and Safety Code (THSC), §366.012, which authorizes the commission to adopt rules to administer the regulation of on-site sewage disposal systems, and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011; and THSC, Chapter 366.

§285.10. Delegation to Authorized Agents.

(a) Responsibility of the authorized agent. An authorized agent is responsible for the proper implementation of this chapter in its area of jurisdiction.

(1) An authorized agent shall administer its on-site sewage facility (OSSF) program according to the OSSF order, ordinance, or resolution approved by the executive director.

(2) An authorized agent shall enforce this chapter and Texas Health and Safety Code (THSC), Chapter 366.

(b) Requirements and procedures.

(1) Upon request from a local governmental entity, the executive director shall forward a description of the delegation process and provide a copy of the executive director's model order, ordinance, or resolution.

(2) If the OSSF program is delegated to a municipality, the jurisdiction of the authorized agent will be limited to the municipality's incorporated area.

(3) To receive delegation as an authorized agent, a local governmental entity shall draft an order, ordinance, or resolution that meets the requirements of this chapter and THSC, §366.032. The local governmental entity shall use the model order, ordinance, or resolution as a guide for developing its order, ordinance, or resolution.

(4) If the local governmental entity proposes more stringent standards than those in this chapter, the local governmental entity shall submit the proposed order, ordinance, or resolution to the executive director for review and comment before publishing notice.

(A) Each more stringent requirement shall be justified based on greater public health and safety protection. The written justification shall be submitted to the executive director with the draft order, ordinance, or resolution.

(B) The executive director shall review the draft order, ordinance, or resolution and provide written comments to the local governmental entity within 30 days of receipt.

(C) If the local governmental entity's draft order, ordinance, or resolution meets the requirements of this chapter, the executive director will notify the local governmental entity in writing to continue the process outlined in this subsection.

(D) If the local governmental entity's draft order, ordinance, or resolution does not meet the requirements of this chapter, the executive director will not continue the review process until all requirements have been met. The executive director will notify the local governmental entity in writing of all deficiencies.

(5) If the local governmental entity proposes using the model order, ordinance, or resolution without more stringent standards, or if the executive director has approved the draft order, ordinance, or resolution with more stringent standards, the local governmental entity shall hold a public meeting to discuss the proposed order, ordinance, or resolution.

(A) The local governmental entity shall publish notice of a public meeting that will be held to discuss the adoption of the proposed order, ordinance, or resolution. The notice must be published in a regularly published newspaper of general circulation in the entity's area of jurisdiction.

(B) The public notice shall include the time, date, and location of the public meeting.

(C) The public notice shall be published at least 72 hours before the public meeting, but not more than 30 days before the meeting.

(6) The local governmental entity shall provide the executive director with the following:

(A) a copy of the public notice as it appeared in the newspaper;

(B) a publisher's affidavit from the newspaper in which the public notice was published;

(C) a certified copy of the minutes of the meeting when the order, ordinance, or resolution was adopted; and

(D) a certified copy of the order, ordinance, or resolution that was passed by the entity.

(7) Upon receiving the information listed in paragraph (6) of this subsection, the executive director shall have 30 days to review the materials to ensure the local governmental entity has complied with the requirements of this chapter and THSC, Chapter 366.

(A) After the review has been completed and all the requirements have been met, the executive director shall sign the order approving delegation and notify the local governmental entity by mail.

(B) If the executive director determines during the review that the materials do not comply with the requirements of this section, the executive director will issue a letter to the local governmental entity detailing the deficiencies.

(8) The local governmental entity's order, ordinance, or resolution shall be effective on the date the order approving delegation is signed by the executive director.

(9) Any appeal of the executive director's decision shall be done according to §50.139 [~~§50.39~~] of this title (relating to Motion to Overturn Executive Director's Decision [~~for Reconsideration~~]).

(c) Amendments to existing orders, ordinances, or resolutions.

(1) To ensure that the authorized agent's program is consistent with current commission rules, the executive director may require periodic amendments of OSSF orders, ordinances, or resolutions.

(2) An authorized agent may initiate an amendment. The authorized agent shall use the procedures in subsection (b) of this section.

(3) The amendment shall be effective on the date the amendment is approved by the executive director.

(d) Relinquishment of delegated authority by authorized agent.

(1) When an authorized agent decides to relinquish authority to regulate OSSFs, the following shall occur:

(A) the authorized agent shall inform the executive director by certified mail at least 30 days before publishing notice of intent to relinquish authority;

(B) the authorized agent shall hold a public meeting to discuss its intent to relinquish the delegated authority;

(i) the authorized agent shall publish notice of a public meeting that will be held to discuss its intent to relinquish the delegated authority. The notice must be published in a regularly published newspaper of general circulation in the entity's area of jurisdiction;

(ii) the public notice shall include the time, date, and location of the public meeting;

(iii) the public notice shall be published at least 72 hours before the public meeting, but not more than 30 days before the meeting;

(C) the authorized agent must, either at the meeting discussed in subparagraph (B) of this paragraph, or at another meeting held within 30 days after the first meeting, formally decide whether to repeal the order, ordinance, or resolution; and

(D) the authorized agent shall forward to the executive director copies of the public notice, a publisher's affidavit of public notice, and a certified copy of the minutes of the meeting in which the authorized agent formally acted.

(2) Before the executive director will process a relinquishment order, the authorized agent and the executive director shall determine the exact date the authorized agent shall surrender its delegated authority. Until that date, the authorized agent will retain all authority and responsibility for the delegated program.

(3) The executive director shall process the request for relinquishment within 30 days of receipt of the copies of documentation

required in paragraph (1)(D) of this subsection. After processing the request for relinquishment, the executive director will issue an order and shall assume responsibility for the OSSF program.

(4) On or after the date determined by the authorized agent and the executive director, the authorized agent shall repeal its [it's] order, ordinance, or resolution. Within ten days after the authorized agent repeals its [it's] order, ordinance, or resolution, the authorized agent shall forward a certified copy of the repeal to the executive director.

(5) Authorized agents who relinquish their OSSF authority may be subject to fees according to §285.14 of this title (relating to Charge-back Fee) after the date that delegation has been relinquished, unless the authorized agent has relinquished its OSSF authority due to a material change in this chapter.

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

Filed with the Office of the Secretary of State on October 25, 2019.

TRD-201903926
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 294. PRIORITY GROUNDWATER MANAGEMENT AREAS

SUBCHAPTER E. DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREAS

30 TAC §294.42

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §294.42.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 294.42 is proposed to be amended by removing an obsolete cross-reference.

The commission is also concurrently proposing amendments to Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§294.42, Commission Action Concerning PGMA Designation

The commission proposes to amend §294.42(a) to update the cross-reference from §50.39, which is concurrently proposed for repeal, to §50.139 (Motion to Overturn Executive Director's Decision).

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with rule amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the removal of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §294.42 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §294.42 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §294.42 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 294.42 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however,

commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; TWC, §35.008, which authorizes the commission to adopt rules regarding the creation of a district over all or part of a priority groundwater management area; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011; and TWC, Chapter 35.

§294.42. Commission Action Concerning PGMA Designation.

(a) If the executive director concludes in the report that the area studied is not a priority groundwater management area (PGMA), no further action by the executive director or the commission is necessary. However, any person may file a motion to overturn under §50.139 [~~§50.39~~] of this title (relating to Motion to Overturn Executive Director's Decision).

(b) If the executive director recommends that the area be designated a PGMA or added to an existing PGMA, or if the commission overturns the executive director's conclusion in subsection (a) of this section, the commission shall consider the executive director's PGMA report and recommendations developed under §294.41 of this title (relating to Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation) using the following procedures.

(1) The commission shall hold an evidentiary hearing. On behalf of the commission, the executive director may refer the evidentiary hearing directly to the Texas State Office of Administrative Hearings (SOAH) [~~SOAH~~]. At the evidentiary hearing, the commission or the administrative law judge shall consider:

(A) whether the proposed PGMA should be designated or added to an existing PGMA;

(B) whether one or more groundwater conservation districts (GCDs) should be created within all or part of the proposed PGMA, whether all or part of the land in the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken; and

(C) the feasibility and practicability of each GCD recommendation. To determine the feasibility and practicability of each GCD recommendation, the commission or the administrative law judge shall consider:

(i) whether the recommended GCD can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(ii) whether the boundaries of the recommended GCD provide for the effective management of groundwater resources; and

(iii) whether the recommended GCD can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district-operation functions under TWC, Chapter 36.

(2) The evidentiary hearing shall be held in one of the counties in which the PGMA is proposed to be located or in the nearest convenient location if adequate facilities are not available in those counties.

(3) The chief clerk shall publish notice of the evidentiary hearing in at least one newspaper with general circulation in the area proposed for PGMA designation. The notice must be published no later than 30 days before the first date set for the hearing. Notice of the evidentiary hearing must include:

(A) if applicable, a statement of the general purpose and effect of designating the proposed PGMA;

(B) if applicable, a statement of the general purpose and effect of creating a new GCD in the proposed PGMA;

(C) if applicable, a statement of the general purpose and effect of adding all or part of the land in the proposed PGMA to an existing GCD;

(D) a map generally outlining the boundaries of the area being considered for PGMA designation or notice of the location at which a copy of the map may be examined or obtained;

(E) a statement that the executive director's report on the proposed PGMA is available for inspection during regular business hours at the commission's main office in Austin, Texas, at regional offices of the commission which include territory within the proposed PGMA, and on the agency's website;

(F) the name and address of each public library, each county clerk's office, and each GCD that has been provided copies of the executive director's report; and

(G) the date, time, and place of the hearing.

(4) The chief clerk shall also mail written notice of the date, time, place, and purpose of the hearing to the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity which supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and of each irrigation district, located either in whole or in part in the PGMA or proposed PGMA.

This notice shall be mailed at least 30 days before the date set for the hearing.

(5) The evidentiary hearing must be conducted within 75 days of the date that notice was provided under paragraph (3) of this subsection. At the hearing, the commission or the administrative law judge shall hear testimony and receive evidence from affected persons, and consider the executive director's report and supporting information. The commission or the administrative law judge may request additional information from any source if further information is considered necessary to make a decision. If the commission or administrative law judge requests additional information, the parties will be allowed to examine this information and present any necessary evidence related to the additional information.

(6) If the hearing is remanded to SOAH, the administrative law judge shall at the conclusion of the hearing, issue a proposal for decision stating findings, conclusions, and recommendations. The administrative law judge shall file findings and conclusions with the chief clerk.

(c) The commission shall consider the findings, conclusions, and recommendations determined from the evidentiary hearing. The commission shall order one or more of the following actions.

(1) Except as provided in paragraph (3) of this subsection, if the commission decides that an area should be designated as a PGMA or adds the area to an existing PGMA, the commission shall designate and delineate the boundaries of the PGMA.

(2) If the commission designates the area as a PGMA or adds the area to an existing PGMA, the order must recommend that the area be covered by a GCD by either creation of one or more new GCDs, by addition of the land in the PGMA to one or more existing GCDs, or by a combination of these actions. The commission shall give preference to GCD boundaries that are coterminous with the boundaries of the PGMA, but may recommend GCD boundaries based upon existing political subdivision boundaries to facilitate creation of a GCD.

(3) If the commission does not designate the area as a PGMA, the commission shall issue an order stating that the PGMA shall not be designated.

(4) If the commission finds that a GCD created under TWC, Chapter 36 would not be feasible or practicable for the protection of groundwater resources in the PGMA, the commission may recommend in its report to the legislature under TWC, §35.018, the creation of a special district or amendment of an existing district's powers and authorities.

(5) The designation of a PGMA may not be appealed nor may it be challenged under TWC, §5.351 or Texas Government Code, §2001.038.

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 October 25, 2019.

TRD-201903927
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 295. WATER RIGHTS, PROCEDURAL

SUBCHAPTER C. NOTICE REQUIREMENTS FOR WATER RIGHT APPLICATIONS

30 TAC §295.159

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §295.159.

Background and Summary of the Factual Basis for the Proposed Rule

A petition for rulemaking was filed with the commission on February 5, 2019, by Lloyd Gosselink Rochelle & Townsend, P.C. on behalf of the City of Wichita Falls (petitioner). The petitioner requested that §295.159 be amended to include an exception from the notice requirements for orders to extend the deadline to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water. This rulemaking was opened pursuant to the commission's order dated March 28, 2019, in which the commission granted the petition considered at a March 27, 2019, public meeting (Project No. 2019-098-PET-NR). The commission's order required an opportunity for stakeholder involvement concerning the issues raised in the petition prior to rule proposal. Therefore, an informal stakeholder meeting was held at the TCEQ on June 13, 2019, and comments were accepted by the commission until June 27, 2019. All comments were considered.

Section Discussion

§295.159, Notice of Extension of Time To Commence or Complete Construction.

The commission proposes to add §295.159(c) which provides that the notice requirements in §295.159(a) and (b) do not apply to a permit for construction of a reservoir designed for storage of more than 50,000 acre-feet of water. Existing §295.159(a) requires published notice and mailed notice (to the same persons to whom notice of the original application for the permit was mailed) for a request for an extension of time to construct if the new date of proposed commencement of construction is more than four years from the date of issuance of the permit or if the new proposed completion time is more than five years from the date of completion required in the original permit. Existing §295.159(b) states that the notice must provide that the commission shall consider whether the appropriation shall be forfeited for failure by the applicant to demonstrate sufficient due diligence and justification for delay.

Texas Water Code (TWC), §11.145 provides that the commission may, by entering an order of record, extend the time for beginning construction of a reservoir, but does not require notice for such extensions. TWC, §11.146, provides that if a permittee fails to begin construction within the time specified in TWC, §11.145, the permittee forfeits all rights to the permit, subject to notice and hearing as prescribed by this section. However, TWC, §11.146(g), provides an exemption from forfeiture under this section for a permit for construction of a reservoir designed for the storage of more than 50,000 acre-feet of water. Therefore, proposed §295.159(c) provides for exempting such reservoirs from notice for extension of time for commencement or completion of construction is consistent with the TWC.

Fiscal Note: Costs to State and Local Government

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

This rulemaking provides that the notice requirements in §295.159(a) and (b) do not apply to a permit for construction of a reservoir designed for storage of more than 50,000 acre-feet of water. This is consistent with TWC, §11.145, which does not require notice for extensions of time and TWC, §11.146, which relates to the exemption of permits for the construction of a reservoir for more than 50,000 acre-feet of water from forfeiture for inaction or failure to timely commence or complete construction.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated may include a cost savings to units of local government and consistency with TWC, §11.145 and §11.146. As of July 8, 2019, the agency has a record of four permits for the construction of a reservoir that is designed for storage or more than 50,000 acre-feet of water which could be affected by the proposed rule. These permits are held by units of local government, either cities or districts.

The proposed rule is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. This rulemaking addresses necessary changes in order to update cross-references and remove obsolete language in various procedural and permitting program rules.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor does it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability; however, the proposed rule does remove a requirement for a permit relating to public notice. This proposed change is consistent with state law. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

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

The purpose of the proposed rule is to amend §295.159, which requires mailed and published notice for an application to extend the deadline for commencement of construction more than four years or to extend the deadline for completion more than five years. This proposed amendment to §295.159 would include an exception from the notice requirements for applications to extend the deadline to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

The specific intent of the proposed rule is to exempt requests for commencement and completion of large reservoirs, 50,000 acre-feet or more, from notice requirements due to the complexity of constructing large reservoirs and the need for other approvals such as from the Corps of Engineers. Allowing the permittees to proceed without the need for notice is a more efficient and reasonable approach to obtaining needed water supplies for a growing state.

Additionally, the amendment to §295.159 is consistent with TWC, §11.145, When Construction Must Begin, and TWC, §11.146, Forfeitures and Cancellation of Permit for Inaction. TWC, §11.145, does not require that the commission provide notice of amendments extending the time for commencement or completion of construction of a reservoir if the permit is to construct a reservoir designed for storage of more than 50,000 acre-feet of water. TWC, §11.146, provides an exception from forfeiture or cancellation of a permit for failure to commence of complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

Thus, the specific intent of this rulemaking is not to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or sector of the state. The proposed rulemaking is a procedural rule, is not a "Major environmental rule," and a full Regulatory Impact Analysis (RIA) is not required.

Even if the proposed rule was a "Major environmental rule," Texas Government Code, §2001.0225, applies to a "Major environmental rule" which exceed standards set by federal law unless the rule is specifically required by state law; exceed requirements of a delegation agreements between state and federal governments to implement a state and federal program; or are adopted solely under the general powers of the agency instead of under a specific state law. 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 being proposed solely under the TCEQ's general rulemaking authority. It is an amendment of an existing rule that was adopted under TWC, §11.145 and §11.146, as previously discussed. It is not based solely under the general powers of the agency instead it is based under a specific state law.

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

Takings Impact Assessment

The commission evaluated this proposed rule amendment and performed analysis of whether the proposed rule constitutes a takings under Texas Government Code, Chapter 2007.

This proposed rulemaking will amend §295.159, which requires mailed and published notice for an application to extend the deadline for commencement of construction more than four years or to extend the deadline for completion more than five years. This proposed amendment to §295.159 would include an exception from this notice requirement for applications to extend the deadline to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

The specific intent of the proposed rule is to allow commencement and completion of large reservoirs, 50,000 acre-feet or more, to be exempt from notice requirements due to the complexity of constructing large reservoirs and the need for other approvals such as from the Corps of Engineers. Allowing the permittees to proceed without the need for notice and the possibility of another hearing is a more efficient and reasonable approach to obtaining needed water supplies for a growing state.

Additionally, the amendment to §295.159 is consistent with TWC, §11.145, When Construction Must Begin, and TWC, §11.146, Forfeitures and Cancellation of Permit For Inaction. TWC, §11.145, does not require that the commission provide notice of amendments extending the time for commencement or completion of construction of a reservoir if the permit is to construct a reservoir designed for storage of more than 50,000 acre-feet of water. TWC, §11.146, provides an exception from forfeiture or cancellation of a permit for failure to commence of complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

This rulemaking would substantially advance the stated purposes of efficiency and consistency by amending §295.159 to allow an exemption from notice for applications for extension of time to commence and complete the reservoir if the reservoir is greater than 50,000 acre-feet.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rulemaking because there are no burdens imposed on private real property by the proposed rule. This rulemaking is an administrative rule that relates to procedural requirements for an application for extension of time to commence and complete the construction of an already permitted reservoir. The rulemaking does not affect an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's rights to the property that would otherwise exist in the absence of the governmental action.

Thus, Texas Government Code, Chapter 2007, does not apply to this proposed rule because the rulemaking does impact private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 3, 2019, at 10:00 a.m. in Room 201S in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-109-295-OW. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Kathleen Ramirez, Water Availability Division, (512) 239-6757.

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.013(a)(1) concerning the TCEQ's authority over water and water rights; TWC, §11.145, which provides requirements for commencement of construction of a reservoir; and TWC, §11.146, which provides forfeiture or cancellation of a water rights permit for inaction.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 11.145, and 11.146.

§295.159. Notice of Extension of Time to Commence or Complete Construction.

(a) If the new date of proposed commencement of construction is more than four years from the date of issuance of the permit, or if the new proposed completion time is more than five years form the date of completion required in the original permit, notice of an application for extension of time shall be mailed and published as required by the Texas Water Code, §11.132 and §11.143, and §295.151 of this title (relating to Notice of Application and Commission Action), §295.152 of this title (relating to Notice by Publication), and §295.153 of this title (relating to Notice by Mail). The chief clerk shall mail notice of the public hearing to the same persons to whom notice of the application for the permit was mailed. The applicant shall be required to publish was mailed. The applicant shall be required to publish notice of the hearing in the same manner in which an applicant for a water use permit is required to publish notice of an application. No other notice is required.

(b) The notice of any application for an extension of time to commence or complete construction must provide that the commission shall also consider whether the appropriation shall be forfeited for failure by the applicant to demonstrate sufficient due diligence and justification for delay.

(c) This section does not apply to a permit for construction of a reservoir designed for storage of more than 50,000 acre-feet of water. No notice shall be required for an extension of time to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in 30 TAC Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. The commission proposes amendments to remove obsolete text and update cross-references in §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as defining and using consistent terms and grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

§305.2, Definitions

The commission proposes to amend §305.2(15) by updating the cross-reference from §39.7, which is concurrently proposed for repeal, to §39.407.

§305.62, Amendments

The commission proposes to amend §305.62(c)(3) by updating the cross-references to §50.45 and §39.151, which are concurrently proposed for repeal, to §50.145 and §39.551, respectively.

§305.69, Solid Waste Permit Modification at the Request of the Permittee

The commission proposes to amend §306.69 to update cross-references to rules that are concurrently proposed for repeal. In subsections (b)(1)(B), (c)(2) and (9), (d)(2), (f)(4) and (g)(1), the reference to §39.13 will be updated to §39.413. In subsections (c)(6) and (7), the reference to §50.33 will be updated to §50.133. Additionally, in subsection (d)(2)(A), the reference to §39.11 will be updated to §39.411.

§305.70, Municipal Solid Waste Permit and Registration Modifications

The commission proposes to amend §305.70(i) by restructuring subsection (i) and updating references for some requirements due to the proposed concurrent repeal of §39.106. The commission also proposes to remove a reference that the permittee or registrant must prepare a Notice of Application and Preliminary Decision. These changes are proposed to conform the section to current practice and for ease of understanding. In addition, the commission proposes to replace the reference to §39.106, which is concurrently proposed for repeal, in subsections (j) and (k) with references to subsection (i).

§305.172, Determining Feasibility of Compliance and Adequate Operating Conditions

The commission proposes to amend §305.172(6) by updating the cross-reference from §39.13, which is concurrently proposed for repeal, to §39.413, and §305.172(11) by updating the cross-reference from §50.33, which is concurrently proposed for repeal, to §50.133.

§305.401, Compliance Plan

The commission proposes to amend §305.401 by removing references to obsolete text, which is concurrently proposed for repeal, and by adding references to current rules that apply to compliance plan applications.

§305.572, Permit and Trial Burn Requirements

The commission proposes to amend §305.572(b) by updating the cross-reference from §39.13, which is concurrently proposed for repeal, to §39.413.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, together with concurrent rule amendments in various other chapters, will update cross-references and remove obsolete language in various procedural and permitting program rules.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public notice and public participation in certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. These changes will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect. This rulemaking addresses necessary changes in order to update cross-references and remove obsolete language in various procedural and permitting program rules.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to

human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking updates cross-references and removes obsolete language to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments of §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments of §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

Sections 305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §305.2

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment

is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§305.2. Definitions.

The definitions contained in Texas Water Code, §§26.001, 27.002, 28.001, and 32.002, and Texas Health and Safety Code, §§361.003, 401.003, and 401.004, apply to this chapter. The following words and terms, when used in this chapter, have the following meanings.

(1) Application--A formal written request for commission action relative to a permit or a post-closure order, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

(2) Bypass--The intentional diversion of a waste stream from any portion of a treatment facility.

(3) Class I sludge management facility--Any publicly owned treatment works identified under 40 Code of Federal Regulations §403.10(a), as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(4) Component--Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

(5) Continuous discharge--A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(6) Corrective action management unit (CAMU)--An area within a facility that is designated by the commission under 40 Code of Federal Regulations Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes while implementing such corrective action requirements at the facility.

(7) Daily average concentration--The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) Domestic wastewater treatment plants. When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) All other wastewater treatment plants. When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

(8) Daily average flow--The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

(9) Direct discharge--The discharge of a pollutant.

(10) Discharge monitoring report--The United States Environmental Protection Agency uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

(11) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

(12) Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(13) Effluent limitation--Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

(14) Facility--Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units; and

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner and operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste).

(15) Facility mailing list--The mailing list for a facility maintained by the commission in accordance with 40 Code of Federal Regulations (CFR) §124.10(c)(1)(ix) and §39.407 [~~§39.7~~] of this title (relating to Mailing Lists). For Class I injection well underground injection control permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(16) Functionally equivalent component--A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(17) Indirect discharger--A non-domestic discharger introducing pollutants to a publicly owned treatment works.

(18) Injection well permit--A permit issued in accordance with Texas Water Code, Chapter 27.

(19) Land disposal facility--Includes landfills, waste piles, surface impoundments, land farms, and injection wells.

(20) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(21) National Pollutant Discharge Elimination System--The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under federal Clean Water Act, §§307, 402, 318, and 405. The term includes an approved program.

(22) New discharger--

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective National Pollutant Discharge Elimination System permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

(23) New source--Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under federal Clean Water Act, §306; or

(B) after proposal of standards of performance in accordance with federal Clean Water Act, §306, which are applicable to such source, but only if the standards are promulgated in accordance with federal Clean Water Act, §306 within 120 days of their proposal.

(24) Operator--The person responsible for the overall operation of a facility.

(25) Outfall--The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.

(26) Owner--The person who owns a facility or part of a facility.

(27) Permit--A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(28) Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation Recovery Act and solid waste management units.

(29) Primary industry category--Any industry category listed in 40 Code of Federal Regulations Part 122, Appendix A, adopted by reference by §305.532 of this title (relating to Adoption of Appendices by Reference).

(30) Process wastewater--Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(31) Processing--The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage, or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline, or other means.

(32) Publicly owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(33) Radioactive material--A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(34) Recommencing discharger--A source which recommences discharge after terminating operations.

(35) Regional administrator--Except when used in conjunction with the words "state director," or when referring to United States Environmental Protection Agency (EPA) approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Commission on Environmental Quality, or to the Texas Commission on Environmental Quality, consistent with the organization of the agency as set forth in Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations Part 122, is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(36) Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code (TWC), §7.031 (relating to Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under TWC, §7.031; §335.166(5) of this title (relating to Corrective Action Program); or §335.167(c) of this title.

(37) Schedule of compliance--A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with the federal Clean Water Act and regulations.

(38) Severe property damage--Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural re-

sources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

(39) Sewage sludge--The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(40) Site--The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(41) Solid waste permit--A permit issued under Texas Health and Safety Code, Chapter 361, as amended.

(42) Storage--The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere.

(43) Texas pollutant discharge elimination system (TPDES)--The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under federal Clean Water Act, §§307, 318, 402, and 405; Texas Water Code; and Texas Administrative Code regulations.

(44) Toxic pollutant--Any pollutant listed as toxic under federal Clean Water Act, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing federal Clean Water Act, §405(d).

(45) Treatment works treating domestic sewage--A publicly owned treatment works or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(46) Variance--Any mechanism or provision under federal Clean Water Act, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the federal Clean Water Act or this title.

(47) Wastewater discharge permit--A permit issued under Texas Water Code, Chapter 26 or under Texas Water Code, Chapters 26 and 32.

(48) Wetlands--Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

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 October 25, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §§305.62, 305.69, 305.70

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§305.62. Amendments.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste (MSW) permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment

is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit or Post-Closure Order). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments, other than amendments for radioactive material licenses in subsection (i) of this section.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.145 [~~§50.45~~] of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.551 [~~§39.151~~] of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 Code of Federal Regulations §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an ap-

plication for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

(i) Types of amendments for radioactive material licenses authorized in Chapter 336 of this title (relating to Radioactive Substance Rules).

(1) Major amendments. A major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes determined by the executive director not to be authorized in the existing license;

(C) authorizes a change in the licensee, owner or operator of the licensed facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency;

(F) authorizes enlargement of the licensed area beyond the boundaries of the existing license;

(G) authorizes a change of the method specified in the license for disposal of by-product material as defined in the Texas Radiation Control Act, Texas Health and Safety Code, §401.003(3)(B);

(H) grants an exemption from any provision of Chapter 336 of this title;

(I) authorizes a new technology or new process that requires an engineering review, unless the new technology or new process meets criteria in §305.62(i)(2)(A) of this title;

(J) authorizes a reduction in financial assurance unless such a reduction occurs as a result of completed closure activities that have been approved by the appropriate regulatory authority; or

(K) authorizes a change which has a potentially significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required;

(2) Minor amendments. An application for a minor amendment is subject to public notice requirements of Chapter 39 of this title (relating to Public Notice), but is not subject to an opportunity to request a contested case hearing. A minor amendment is one which:

(A) authorizes a modification that is not specifically authorized in an existing condition in a license issued under Chapter 336 of this title and which does not pose a potential detrimental impact on public health and safety, worker safety, or environmental health;

(B) authorizes the addition of previously reviewed production or processing equipment, and where an environmental assessment has been completed;

(C) authorizes a reduction in financial assurance as a result of completed closure activities that have been approved by the appropriate regulatory authority; or

(D) any amendment, after completion of a review, the executive director determines is a minor amendment.

(3) Administrative amendments. An application for an administrative amendment is not subject to public notice requirements and is not subject to an opportunity to request a contested case hearing. An administrative amendment is one which:

(A) corrects a clerical or typographical error;

(B) changes the mailing address or other contact information of the licensee;

(C) changes the Radiation Safety Officer, if the person meets the criteria in Chapter 336 of this title;

(D) changes the name of an incorporated licensee that amends its articles of incorporation only to reflect a name change, if updated information is provided by the licensee, provided that the Secretary of State can verify that a change in name alone has occurred;

(E) is a federally-mandated change to a license;

(F) corrects citations in license from rules/statutes;

(G) is necessary to address emergencies;

(H) authorizes minor modifications to existing facilities, consistent with individual license conditions for a specified facility with demonstrated performance, that enhance public health and safety or protection of the environment;

(I) authorizes minor modifications to existing facilities, consistent with individual license conditions for a specified facility with demonstrated performance, to enhance environmental monitoring programs and protection of the environment; or

(J) any amendment, after completion of a review, the executive director determines is an administrative amendment.

(j) This subsection applies only to major amendments to MSW permits.

(1) A full permit application shall be submitted when applying for a major amendment to an MSW permit for the following changes:

(A) an increase in the maximum permitted elevation of a landfill;

(B) a lateral expansion of an MSW facility other than changes to expand the buffer zone as defined in §330.3 of this title (relating to Definitions). Changes to the facility legal description to increase the buffer zone may be processed as a permit modification requiring public notice under §305.70(k) of this title;

(C) any increase in the volumetric waste capacity at a landfill or the daily maximum limit of waste acceptance for a Type V processing facility; and

(D) upgrading of a permitted landfill facility to meet the requirements of 40 Code of Federal Regulations Part 258, including facilities which previously have submitted an application to upgrade.

(2) For all other major amendment applications for MSW facilities, only the portions of the permit and attachments to which changes are being proposed are required to be submitted. The executive director's review and any hearing or proceeding on a major amendment subject to this paragraph shall be limited to the proposed changes, including information requested under paragraph (3) of this subsection. Examples of changes for which less than a full application may be submitted for a major amendment include:

(A) addition of an authorization to accept a new waste stream (e.g., Class 1 industrial waste);

(B) changes in waste acceptance and operating hours outside the hours identified in §330.135 of this title (relating to Facility Operating Hours), or authorization to accept waste or operate on a day not previously authorized; and

(C) addition of an alternative liner design, in accordance with §330.335 of this title (relating to Alternative Liner Design).

(3) The executive director may request any additional information deemed necessary for the review and processing of the application.

(k) This subsection applies only to temporary authorizations made to existing MSW permits or registrations.

(1) Examples of temporary authorizations include:

(A) the use of an alternate daily cover material on a trial basis to properly evaluate cover effectiveness for odor and vector control;

(B) temporary changes in operating hours to accommodate special community events or prevent disruption of waste services due to holidays;

(C) temporary changes necessary to address disaster situations; and

(D) temporary changes necessary to prevent the disruption of solid waste management activities.

(2) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be conducted, an explanation of why the authorization is necessary, and how long the authorization is needed.

(3) The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days, if circumstances warrant the extension.

(4) The executive director may provide verbal authorization for activities related to disasters as described in paragraph (1)(C) of this subsection. When verbal authorization is provided, the permittee or registrant shall document both the details of the temporary changes and the verbal approval, and provide the documentation to the executive director within three days of the request.

(5) Temporary authorizations for MSW facilities may include actions that would be considered to be either a major or minor change to a permit or registration. Temporary authorizations apply to changes to an MSW facility or its operation that do not reduce the capability of the facility to protect human health and the environment.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a) Applicability. This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are covered in §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(b) Class I modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of subsection (k) of this section under the following conditions:

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §39.413 [~~§39.13~~] of this title (relating to Mailed Notice). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I of subsection (k) of this section by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of subsection (k) of this section, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title and §§305.41 - 305.45 and 305.47 - 305.53 of this title;

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.413 [~~§39.13~~] of this title and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the executive director evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, subparagraphs (A), (B), (C), (D), or (E) of this paragraph must be met, subject to §50.133 [~~§50.33~~] of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization; or

(E) the executive director must notify the permittee that the executive director or the commission will decide on the request within the next 30 days.

(7) If the executive director notifies the permittee of a 30-day extension for a decision, then no later than 120 days after receipt of the modification request, subparagraphs (A), (B), (C), or (D) of this paragraph must be met, subject to §50.133 [~~§50.33~~] of this title, as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(8) If the executive director or the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the executive director or the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §39.413 [~~§39.13~~] of this title, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the executive director or the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date

of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the executive director or the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendments) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title.

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the executive director or the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (f) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission or the executive director may change the terms of, and the commission may deny a Class 2 permit modification request under paragraphs (6) - (8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of subsection (k) of this section, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title and §§305.41 - 305.45 and 305.47 - 305.53 of this title; and Subchapter Q of this chapter (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.413 [~~§39.13~~] of this title and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the executive director. The notice shall include the following:

(A) all information required by §39.411 [~~§39.11~~] of this title (relating to Text of Public Notice);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of Chapter 39 of this title (relating to Public Notice), Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(7) Except as otherwise required by Chapter 39 of this title, the notice requirements in this section do not apply to Class 3 modification applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of subsection (k) of this section, the permittee may submit a Class 3 modification request to the agency, or the permittee may re-

quest a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I of subsection (k) of this section and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may grant the permittee a temporary authorization having a term of up to 180 days, in accordance with this subsection, and in accordance with the following public notice requirements:

(A) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(B) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii) - (v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with the applicable standards of Chapter 335, Subchapter F of this title and 40 Code of Federal Regulations (CFR) Part 264.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §39.413 [~~§39.13~~] of this title. This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the applicable standards of Chapter 335, Subchapter F of this title and 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or Section 3004 of the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §6924;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §39.413 [~~§39.13~~] of this title within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261, or

to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title, Chapter 335, Subchapter H, Divisions 1 through 4 of this title (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to Section 6921 of the Resource Conservation and Recovery Act Subtitle C (Subchapter III Hazardous Waste Management, 42 United States Code, §§6921 - 6939e); and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater monitoring requirements and with Chapter 37 of this title (relating to Financial Assurance) on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet 40 CFR Part 63, Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of subsection (k) of this section.

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c) that were in effect prior to October 11, 2000, as amended in 40 CFR §270.42(j) through October 12, 2005 (70 Federal Register 59402), before a permit modification can be requested under this section.

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(3) Facility owners or operators may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under L.10. in Appendix I of subsection (k) of this section. The facility owner or operator must:

(A) identify the specific RCRA permit operating and emissions limits which are requested to be waived;

(B) provide an explanation of why the changes are necessary to minimize or eliminate conflicts between the RCRA permit and MACT compliance;

(C) discuss how the revised provisions will be sufficiently protective; and

(D) the executive director shall notify the facility owner or operator whether the Class 1 permit modification has been approved or denied. If denied, the executive director shall provide justification for denial.

(4) To request the modification referenced in paragraph (3) of this subsection in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR §63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the executive director); the owner or operator must:

(A) submit the modification request to the executive director at the same time the test plans are submitted to the executive director; and

(B) the executive director may elect to approve or deny the request contingent upon approval of the test plans.

(j) Military hazardous waste munitions storage, processing, and disposal. The permittee is authorized to continue to accept waste military munitions regardless of [~~notwithstanding~~] any permit conditions barring the permittee from accepting off-site wastes, if:

(1) the facility is in existence as a hazardous waste facility, and the facility is already permitted to handle waste military munitions, on the date when waste military munitions become subject to hazardous waste regulatory requirements;

(2) on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions; and

(3) the permittee submits a Class 2 modification request within 180 days of the date when the waste military munitions become subject to hazardous waste regulatory requirements.

(k) Appendix I. The following appendix will be used for the purposes of this subchapter which relates to industrial and hazardous solid waste permit modification at the request of the permittee.
Figure: 30 TAC §305.69(k)
[~~Figure: 30 TAC §305.69(k)~~]

§305.70. Municipal Solid Waste Permit and Registration Modifications.

(a) This section applies only to modifications to municipal solid waste (MSW) permits and registrations related to regulated MSW activities. Modifications to industrial and hazardous solid waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Changes to conditions in an MSW permit or registration which were specifically ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section. Applications filed before the effective date of this section will be subject to the section as it existed at the time the application was received.

(b) References to the term "permit" in this section include the permit document and all of the attachments thereto as further defined in Chapter 330, Subchapter B of this title (relating to Permit and Registration Application Procedures). References to the term "registration" in this section include the registration document and all of the attachments thereto as further defined in Chapter 330, Subchapter B of this title.

(c) Any increase in the permitted or registered daily maximum limit of waste acceptance for a Type V processing facility shall be subject either to the requirements of §305.62(c)(1) of this title (relating to Amendment) in the case of a permitted facility, or to the requirements of a new registration in the case of a registered facility. Changes in the annual waste acceptance rate at landfill facilities are subject to the requirements of §330.125(h) of this title (relating to Recordkeeping Requirements).

(d) Permit and registration modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment.

(e) A permittee or registrant may implement a modification to an MSW permit or registration provided that the permittee or registrant has received prior written authorization for the modification from the executive director. In order to receive prior written authorization, the permittee or registrant must submit a modification application to the executive director which includes, at a minimum, the following information:

(1) a description of the proposed change;

(2) an explanation detailing why the change is necessary;

(3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of a permit or a registration (i.e., a site development plan, site operating plan, engineering report, or any other approved plan attached to a permit or a registration document). These revisions shall be marked and include revision dates and notes as necessary in accordance with §330.57(g) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities);

(4) a reference to the specific provision under which the modification application is being made; and

(5) for those modifications submitted in accordance with subsection (l) of this section that the executive director determines that notice is required and for those listed in subsection (k) of this section, an updated landowners map and an updated landowners list as required under §330.59(c)(3) of this title (relating to Contents of Part I of the Application).

(f) The permittee or registrant must submit one original, two unmarked copies, and one marked (e.g.$_2$ redline/strikeout) copy of the modification application in accordance with §305.44 of this title (relating to Signatories to Applications). The applicant shall provide one of the two unmarked copies to the appropriate commission regional office. Failure to submit the modification application with complete information may result in the application being returned to the permittee or registrant without further action. Engineering documents must be signed and sealed by the responsible licensed professional engineer as required by §330.57(f) of this title.

(g) The following shall guide the processing of applications for modification of permits and registrations:

(1) For an application for a modification that does not require notice, if at the end of 60 calendar days after receipt of the permit or registration modification application the executive director has not taken one of the following five steps, the application shall be automatically approved:

(A) approve the application, with or without changes, and modify the permit or registration accordingly;

(B) deny the application;

(C) provide a notice-of-deficiency letter requiring additional or clarified information regarding the proposed change;

(D) determine that the application does not qualify as a registration modification, and that the requested change requires a new application for registration; or

(E) determine that the application does not qualify as a permit modification and that the requested change requires an amendment to the permit in accordance with §305.62(c) of this title.

(2) For an application for a modification that requires notice, technical review shall be completed within 60 calendar days of receipt of the permit or registration modification application, unless the review period is extended by the executive director in writing if needed to resolve an outstanding notice of deficiency. Upon completion of the public comment period, the executive director may do one of the following.

(A) If no timely comments are received, the executive director may grant the application on the 28th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk. The application is automatically approved if not acted on by the 28th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk.

(B) If timely comments are received, the executive director may take one of the steps listed in paragraph (1) of this subsection on or before the 45th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk. The application is automatically approved if not acted on by the 45th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk.

(h) If an application for a permit or registration modification is denied by the executive director, the permittee or registrant must comply with the original permit or registration conditions.

(i) If a permit or registration modification is listed in subsection (k) of this section or if a permit or registration modification application is made under subsection (l) of this section and the executive director determines that notice is required, notice shall be made [~~the permittee or registrant must prepare and provide Notice of Application and Preliminary Decision after technical review is complete~~] in accordance with §39.1009 [~~§39.106~~] of this title (relating to Notice of Modification of a Municipal Solid Waste Permit or Registration) and the following requirements: [~~Application for Modification of a Municipal Solid Waste Permit or Registration).~~

(1) The permittee or registrant shall: [~~If notice is required, the applicant must~~]

(A) file a landowner's list current on the day of filing under subsection (e)(5) of this section and §39.413(1) of this title (relating to Mailed Notice);[~~.~~]

(B) provide Notice of Application and Preliminary Decision after technical review is complete in accordance with §39.1009 of this title;

(C) mail the notice to the persons listed in §39.413 of this title; and

(D) file certification with the commission on a form prescribed by the executive director that notice was provided as required by this section.

(2) The text of the notice prepared by the executive director shall:

(A) comply with §39.1009 of this title;

(B) [~~The notice shall~~] state that a person may provide the commission with written comments on the application within 23 days after the date the applicant mails notice; and [~~shall~~]

(C) provide the website [~~Web site~~] address where the application has been placed in accordance with §330.57(i) of this title [~~(relating to Permit and Registration Applications for Municipal Solid Waste Facilities)~~].

(3) Before acting on an application, the executive director shall review and consider any timely written comments. The executive director is not required to file a response to comment. [~~comments. Prior to approval of a modification application, the permittee or registrant must file certification, on a form prescribed by the executive director, that notice was provided as required by §39.106 of this title.~~]

(4) The chief clerk shall mail notice of issuance of a modification in accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update). Section 50.133(b) of this title does not apply to modifications which do not require notice under subsection (j) or (l) of this section.

(j) Paragraphs (1) - (32) of this subsection are allowable permit and registration modifications that do not require notice if they meet the criteria in subsection (d) of this section (i.e., they must apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment):

(1) the establishment of a cell or area that will accept brush and construction demolition waste and rubbish only (also known as a Type IV area) if the cell or area is located within the disposal footprint specified in the site development plan or municipal solid waste landfill (MSWLF) permit;

(2) changes in excavation details for landfills, except for changes that would:

(A) increase the depth or lateral extent of the disposal footprint as described in the site development plan or permit; or

(B) increase the disposal capacity of the landfill facility;

(3) changes to the landfill marker systems (e.g., from a grid based upon geographic coordinates to a grid based upon survey coordinates);

(4) an increase in sampling frequency (e.g., for groundwater and landfill gas monitoring systems);

(5) submittal of a new Soils and Liner Quality Control Plan (SLQCP) or changes to an existing SLQCP;

(6) changes to existing landfill underdrain or dewatering systems that maintain or improve effectiveness;

(7) changes to the site layout plan that add or delete a registered or exempted MSW facility/activity (e.g., a used or scrap tire collection area, a compost operation, a recycling collection area, a liquid waste processing facility, a registered transfer station, a citizens' collection station, a beneficial landfill gas recovery plant, a brush collection/chipping/mulching area, etc.);

(8) changes in the site layout, other than entry gate location, that relocate the gatehouse, office or maintenance building locations, or that add scales to the facility;

(9) changes in the design details for an authorized solidification basin;

(10) changes in the drainage control plan that alter internal storm water run-on/run-off control without impacting offsite drainage or increasing landfill disposal capacity;

(11) the addition of design and operational requirements in accordance with §330.173 of this title (relating to the Disposal of Industrial Wastes) for the opening of a dedicated cell or area that will accept Class 1 nonhazardous industrial waste, provided that the landfill permit authorizes the acceptance of that waste and that the dedicated cell or area is located within the disposal footprint specified in the site development plan or MSWLF permit;

(12) changes in the sequence of landfill development unless the changes would potentially affect the adjacent property owners or the community in which case notice in accordance with subsection (i) of this section [~~§39.106 of this title~~] would be required;

(13) changes in the perimeter access control system that do not reduce system effectiveness in controlling access to the site;

(14) corrections in the metes and bounds description of the permit or registration boundary that reduce the size of the facility and that do not result in permit or registration acreage beyond the original permit or registration boundary;

(15) a change in the facility records storage area from an onsite to an offsite location;

(16) the addition of a composting refund plan (a plan containing instructions and procedures to ensure collection of the composting refund, as cited in Texas Health and Safety Code, §361.0135) to the site operating plan of an MSWLF;

(17) changes to the Site Development Plan or Site Operating Plan to provide performance-based standards for personnel or equipment, or minor corrections to provide consistency within the permit;

(18) installation of a new monitoring well(s) that replace(s) an existing monitoring well(s) (e.g., landfill gas or groundwater monitoring well(s)) that has been damaged or rendered inoperable, with no change to the design or depth of the well(s), or to the monitoring system design;

(19) changes to an existing leachate collection system design;

(20) installation of a new landfill gas monitoring system not required by permit;

(21) changes to an existing landfill gas monitoring system design that maintain or improve the monitoring system design;

(22) changes to an existing landfill gas collection system design. Changes made for the purpose of complying with other permits, rules, or regulations do not require prior approval under this section before implementation. Notification of changes made to a landfill gas collection system in order to comply with other permits, rules, or regulations shall be sent within 30 days to the executive director and the appropriate commission regional office. Upon receipt of the notification the executive director will determine if submittal of a modification is required;

(23) submittal of a new Groundwater Sampling and Analysis Plan (GWSAP) or changes to an existing GWSAP;

(24) submittal of a new waste acceptance plan or the addition of detailed narrative or design drawings which provide details for the acceptance of waste streams authorized within the permit or registration (e.g., Class 1 nonhazardous industrial waste);

(25) revisions to an existing waste acceptance plan to include waste streams authorized by the permit or registration;

(26) upgrade of an existing landfill groundwater monitoring system with no increase in depth or design, or the installation of monitor wells at a different depth or design in addition to wells in the approved groundwater monitoring system. Changes to the groundwater monitoring system resulting from a change in the groundwater characterization as defined in Chapter 330, Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action), must be requested as an amendment under §305.62 of this title;

(27) the plugging of monitoring wells (e.g., landfill gas or groundwater monitoring wells) when the executive director has determined that the plugging of monitoring wells is appropriate in various situations including, but not limited to, when a facility has completed the post-closure maintenance period, when an obsolete monitoring system is being replaced with a new monitoring system, or when a damaged monitoring well is being replaced;

(28) changes to closure or post-closure care plans for technical corrections, updated testing procedures, etc.;

(29) substitution of an equivalent financial assurance mechanism;

(30) changes to a closure or post-closure care cost estimate required under §§330.503, 330.505, or 330.507 of this title (relating to Closure Cost Estimates for Landfills; Closure Cost Estimates For Storage and Processing Units; and Post-Closure Care Cost Estimates for Landfills) that result in an increase/decrease in the amount of financial assurance required if the increase/decrease in the cost estimate is due to an increase/decrease in the maximum area requiring closure;

(31) changes in the amount of financial assurance required as the result of corrective action;

(32) changes to the entry gate location that do not alter access traffic patterns delineated in the permit or registration;

(k) Paragraphs (1) - (13) of this subsection are modifications which require notice. For those modifications requiring notice, the permittee or registrant must send notice of the modification application by first-class mail in accordance with subsection (i) of this section [~~§39.106 of this title~~] and to all persons listed in §39.413 of this title:

(1) the use of an alternate daily cover material on a permanent basis in accordance with §330.165(d) of this title (relating to Landfill Cover);

(2) a modification in the operation of a landfill that will change the incoming waste stream to a more restrictive waste stream (i.e., a change from a Type I landfill operation to a Type IV landfill operation). The modification may be granted if the receipt of waste under the present operation ceases once the modification is approved; the filled portion of the landfill will be closed in accordance with Chapter 330, Subchapter K of this title (relating to Closure and Post-Closure); and the modification application details changes to the site development plan and site operating plan as appropriate to reflect the proposed change in operation;

(3) installation of a landfill gas collection system for a landfill gas remediation plan in accordance with §330.371 of this title (relating to Landfill Gas Management);

(4) changes to groundwater monitor well depth or design that are consistent with the groundwater characterization and approved monitoring system design, and that improve the effectiveness of the system in detecting contamination. Changes to the groundwater monitoring system resulting from a change in the groundwater characterization, must be requested as an amendment under §305.62 of this title;

(5) changes to decrease sampling frequency (e.g., for groundwater and landfill gas monitoring systems);

(6) changes to a site layout plan that relocate a liquid waste solidification facility or a petroleum-contaminated soil stabilization area;

(7) changes to the facility legal description due to the addition of property for purposes of increasing the buffer zone as defined in §330.3 of this title;

(8) changes to the excavation plan with no increase in the landfill's maximum permitted elevation, depth or permitted capacity and which do not alter the effectiveness of the groundwater monitoring system;

(9) changes to the approved final contours and approved final slopes with no height or capacity increase over the maximum permitted height or capacity, with no impact to off-site drainage;

(10) changes to include an alternative final cover design in accordance with §330.457(d) of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993);

(11) installation of a new leachate collection system not authorized in the existing permit;

(12) changes to post-closure use of a landfill in accordance with §330.957 of this title (relating to Contents of the Development Permit and Workplan Application) during the post-closure care period;

(13) name changes or transfers of municipal solid waste permits or registrations in accordance with §305.64 of this title (relating to Transfer of Permits) must be processed as permit or registration modification and require public notice after issuance. The mailing procedures of this subsection shall be followed. Mailing procedures shall be completed after the transfer is approved and within 20 days following the approval.

(l) In case of an application for a permit or registration modification for a change not listed in subsection (j) or (k) of this section, the executive director shall make a determination as to whether the change is eligible to be processed as a permit or registration modification and if the change requires public notice in accordance with subsection (i) of this section. In making this determination, the executive director shall consider if the requested change meets the criteria in subsections (d) and (e) of this section. Public notice shall be reserved for modification applications of similar impact as modifications listed in subsection (k) of this section.

(m) The applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn the executive director's action on a modification application in accordance with §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

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

Filed with the Office of the Secretary of State on October 25, 2019.

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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) 239-2678

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SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

30 TAC §305.172

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§305.172. Determining Feasibility of Compliance and Adequate Operating Conditions.

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 CFR §264.345, the commission shall establish conditions in the permit for a new hazardous waste incinerator, to be effective during the trial burn.

(1) Applicant shall propose a trial burn plan, prepared under paragraph (2) of this section, with Part B of the permit application.

(2) The trial burn plan shall include the following information:

(A) an analysis of each waste or mixture of wastes to be burned which includes:

(i) heat value of the waste in the form and composition in which it will be burned;

(ii) viscosity (if applicable), or description of physical form of the waste;

(iii) an identification of any hazardous organic constituents listed in 40 CFR Part 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in 40 CFR Part 261, Appendix VIII, which reasonably would not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for their exclusion established. The waste analysis must rely on appropriate analytical techniques; and

(iv) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods;

(B) a detailed engineering description of the incinerator for which the permit is sought, including:

(i) manufacturer's name and model number of incinerator (if available);

(ii) type of incinerator;

(iii) linear dimensions of the incinerator unit, including the cross-sectional area of combustion chamber;

(iv) description of the auxiliary fuel system (type/feed);

(v) capacity of prime mover;

(vi) description of automatic waste feed cut-off system(s);

(vii) stack gas monitoring and pollution control equipment;

(viii) nozzle and burner design;

(ix) construction materials; and

(x) location and description of temperature, pressure, and flow indicating and control devices;

(C) a detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(D) a detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the decision under paragraph (5) of this section;

(E) a detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;

(F) a description of, and planned operating conditions for, any emission control equipment which will be used;

(G) procedures for rapidly stopping the waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and

(H) such other information as the executive director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (5) of this section.

(3) The executive director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section.

(4) Based on the waste analysis data in the trial burn plan, the commission shall specify as trial principal organic hazardous constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the commission based on an estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and for wastes listed in 40 CFR Part 261, Subpart D, the hazardous waste organic con-

stituent or constituents identified in Appendix VII of that part as the basis for listing.

(5) The commission shall approve a trial burn plan if it finds that:

(A) the trial burn is likely to determine whether the incinerator performance standard required by 40 CFR §264.343 can be met;

(B) the trial burn itself will not present an imminent hazard to human health or safety or the environment;

(C) the trial burn will help the commission to determine the operating requirements to be specified (in the permit) according to 40 CFR §264.345; and

(D) the information sought in subparagraphs (A) and (C) of this paragraph cannot reasonably be developed through other means.

(6) The chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.413 [~~§39.13~~] of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 CFR §270.62(b)(6)(i) - (ii), as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

(7) During each approved trial burn (or as soon after the burn as practicable), the applicant must make the following determinations:

(A) a quantitative analysis of the trial POHCs in the waste feed to the incinerator;

(B) a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O_2) [~~(O2)~~] and hydrogen chloride (HCl);

(C) a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

(D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR §264.343(a);

(E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with 40 CFR §264.343(b);

(F) a computation of particulate emissions, in accordance with 40 CFR §264.343(c);

(G) an identification of sources of fugitive emissions and their means of control;

(H) a measurement of average, maximum, and minimum temperatures and combustion gas velocity;

(I) a continuous measurement of carbon monoxide (CO) in the exhaust gas; and

(J) such other information as the executive director may specify as necessary to ensure that the trial burn will determine the compliance with the performance standards in 40 CFR §264.343 and to establish the operating conditions required by 40 CFR §264.345 as necessary to meet those performance standards.

(8) The applicant must submit to the executive director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in paragraph (7) of this section. This submission shall be made within 90 days of completion of the trial burn, or later with the prior approval of the executive director.

(9) All data collected during any trial burn shall be submitted to the executive director immediately following the completion of the trial burn.

(10) All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports).

(11) Based on the results of the trial burn, the commission or the executive director, as appropriate, subject to §50.133 [~~§50.33~~] of this title (relating to Executive Director Action on Application), shall set the operating requirements in the final permit according to 40 CFR §264.345. The permit amendment or modification shall proceed according to §305.62 of this title (relating to Amendments) or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

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

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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER L. GROUNDWATER COMPLIANCE PLAN

30 TAC §305.401

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024 which authorizes the com-

mission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§305.401. Compliance Plan.

(a) In order to administer the groundwater protection requirements relating to compliance monitoring and corrective action for facilities that store, process, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills, and the requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), the commission shall establish a compliance plan.

(b) The following rules of this title pertaining to application, and notice and hearing shall be applicable in proceedings to establish the plan: §39.401 of this title (relating to Purpose); §39.403 of this title (relating to Applicability); §39.405 of this title (relating to General Notice Provisions); §39.407 of this title (relating to Mailing Lists); §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing); §39.411 of this title (relating to Text of Public Notice); §39.413 of this title (relating to Mailed Notice); §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit); §39.419 of this title (relating to Notice of Application and Preliminary Decision); §39.420 of this title (Transmittal of the Executive Director's Response to Comments and Decision); §39.421 of this title (relating to Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application); §39.423 of this title (relating to Notice of Contested Case Hearing); §39.425 of this title (relating to Notice of Contested Enforcement Case Hearing); §39.503 of this title (relating to Application for Industrial or Hazardous Waste Facility Permit); §39.509 of this title (relating to Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit); §39.1005 of this title (relating to Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit); §39.1007 of this title (relating to Notice of Class 2 Modification of an Industrial Solid Waste or Hazardous Waste Permit); §50.113 of this title (relating to Applicability and Action on Application); §50.115 of this title (relating to Scope of Contested Case Hearings); §50.117 of this title (relating to Commission Actions); §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing); §55.200 of this title (relating to Applicability); §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing); §55.203 of this title (relating to Determination of Affected Person); §55.205 of this title (relating to Request by Group or Association); §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing); §55.210 of this title (relating to Direct Referrals); §55.211 of this title (relating to Commission Action on Requests for Reconsideration and Contested Case Hearing); [~~§39.3 of this title (relating to Purpose); §39.5 of this title (relating to General Provisions); §39.7 of this title (relating to Mailing Lists); §39.11 of this title (relating to Text of Public Notice); §39.13 of this title (relating to Mailed Notice); §39.17 of this title (relating to Notice of Minor Amendment); §39.21 of this title (relating to Notice of Commission Meeting to Evaluate a Hearing Request on an Application); §39.23 of this title (relating to Notice of Hearing Held by SOAH, Including Hearing on Hearing Requests); §39.25 of this title (relating to Notice of Contested Enforcement Case Hearing); §39.103 of this title (relating to Application for Industrial or Hazardous Waste Facility Permit); §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit); §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit); §39.109 of this title (relating to Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit); §50.13 of this title (relating to Action on Application); §50.15 of this title (relating to Scope of Proceedings); §50.17 of this title (relating to Commission Actions); §55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment);~~] Chapter 281 of this title (relating to Applications Processing); §305.43 of this title (relating to Who Applies); §305.44 of this title (relating to Signatories to Applications); §305.47 of this title (relating to Retention of Application Data); §305.50 of this title (relating to Additional Requirements for an Application for a Solid Waste Permit); §305.53 of this title (relating to Application Fees); §305.122 - §305.124 of this title (relating to Characteristics of Permits; Reservation in Granting Permit; and Acceptance of Permit, Effect); and §305.128 of this title (relating to Signatories to Reports).

(c) Any investigation report to establish compliance monitoring or corrective action shall contain the information specified in the regulations contained in 40 Code of Federal Regulation (CFR)[~~,~~] §270.14(c)(7) and (8), which are in effect as of September 9, 1987. The executive director may authorize, in writing, in advance the submittal of a proposed permit schedule for the submittal of an engineering feasibility plan as set forth in the regulations contained in 40 CFR [~~Code of Federal Regulations,~~] §270.14(c)(7), which are in effect as of September 9, 1987. The executive director may also authorize, in writing, prior to the submittal of a complete permit application, the submittal of a schedule for the information required in the regulations contained in 40 CFR [~~Code of Federal Regulations,~~] §270.14(c)(8)(iii) and (iv), as set forth in the regulations contained in 40 CFR §270.14(c)(8)(v) [~~40 Code of Federal Regulations, §.270.14(c) (8)(v)~~], which are in effect as of September 9, 1987. The executive director may request information necessary to determine the appropriateness and extent of corrective action required by §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

(d) The executive director shall prepare a draft compliance plan unless the executive director recommends not to approve the plan. The draft compliance plan shall be available for public review, and notice that the executive director has prepared such a plan will be given pursuant to §305.100 of this title (relating to Notice of Application). The draft compliance plan shall be filed with the commission to be included in its consideration of the approval of a compliance plan.

(e) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft compliance plan. The executive director shall send this summary together with the draft compliance plan to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft compliance plan;

(2) the type and quantity of wastes, fluids, or pollutants which are being managed at the facility;

(3) a brief summary of the basis for the conditions of the draft compliance plan, including references to applicable statutory or regulatory provisions;

(4) a description of the procedures for reaching a final decision on the draft compliance plan, including procedures whereby the public may participate in the final decision; and

(5) the name and telephone number of a person in the commission to contact for additional information.

(f) The plan may be amended:

(1) when the corrective action program specified in the plan under §335.165 of this title (relating to Compliance Monitoring Program) has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable time;

(2) When the plan requires a compliance monitoring program under §335.165 of this title [~~(relating to Compliance Monitoring Program)~~], but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard. The sections of this chapter pertaining to major amendments shall be applicable to the foregoing amendments to the compliance plan.

(g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §§335.156 - 335.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; and [~~Compliance Monitoring Program;~~] Corrective Action Program[~~; and Corrective Action for Solid Waste Management Units~~]) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the compliance plan shall be consolidated in one proceeding.

(h) Nothing herein shall be construed to be inconsistent with the commission's authority under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §8 and §8b.

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 Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

30 TAC §305.572

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state ; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§305.572. Permit and Trial Burn Requirements.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through August 1, 2005 (70 FedReg 44150) or as stated below:

(1) 40 CFR §270.66(b) - Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amendment or modification shall proceed according to the applicable requirements of Subchapter D of this chapter (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) 40 CFR §270.66(c) - Requirements for Trial Burn Plans;

(3) 40 CFR §270.66(d) - Trial Burn Procedures, except 40 CFR §270.66(d)(3), and except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) 40 CFR §270.66(e) - Special Procedures for DRE Trial Burns; and

(5) 40 CFR §270.66(f) - Determinations Based on Trial Burn.

(6) 40 CFR §270.235 - Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers and Hydrochloric Acid Production Furnaces to Minimize Emissions from startup, shutdown, and malfunction events as amended through October 12, 2005 (70 FedReg 59402).

(b) With regard to trial burn notice procedures, the chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.413 [~~§39.13~~] of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 CFR §270.66(d)(3)(i) - (ii) as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

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

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CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §321.97, concerning Motion for Reconsideration; §321.212, concerning Purpose and Applicability; and §321.253, concerning Purpose and Applicability.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. The commission proposes to update cross-references in §§321.97, 321.212, and 321.253.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

§321.97, Motion for Reconsideration

The commission proposes to amend §321.97 by updating the title of the section and the cross-reference from §50.39(b) - (f), which is concurrently proposed for repeal, to §50.139.

§321.212, Purpose and Applicability

The commission proposes to amend §321.212(a) by updating the cross-reference to Chapter 50, Subchapter C, which is concurrently proposed for repeal, to Chapter 50, Subchapter G.

§321.253, Purpose and Applicability

The commission proposes to amend §321.253(a) by updating the cross-reference to Chapter 50, Subchapter C, which is concurrently proposed for repeal, to Chapter 50, Subchapter G.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update cross-references.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect. This rulemaking addresses the update to obsolete cross-references.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

Sections §§321.97, 321.212, and 321.253 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted

via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER F. SHRIMP INDUSTRY

30 TAC §321.97

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; and TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011.

§321.97. Motion to Overturn [for ~~Reconsideration~~].

Any person aggrieved by a decision of the executive director under this subchapter may file with the chief clerk a motion to overturn [~~for reconsideration~~] under §50.139 [~~§50.39(b)-(f)~~] of this title (relating to Motion to Overturn Executive Director's Decision [~~for Reconsideration~~]).

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 L. DISCHARGES TO SURFACE WATERS FROM MOTOR VEHICLES CLEANING FACILITIES

30 TAC §321.212

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; and TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011.

§321.212. Purpose and Applicability.

(a) The purpose of this subchapter is to regulate by rule the surface discharge to water in the state of facility wastewater from motor vehicles cleaning facilities in accordance with the effluent limitations, monitoring requirements, and other conditions set forth herein. Certificates of registration issued under this subchapter are subject to Chapter 50, Subchapter G [~~C~~] of this title (relating to Action by the Executive Director). Except as provided by §321.219 of this title (relating to Enforcement and Revocation) and except as provided by subsection (e) of this section, this rule regulates the following type of facilities which in a given month discharge, on average, more than 5,000 gallons per day of operation:

(1) Establishments primarily engaged in washing, waxing, and polishing motor vehicles. These type of facilities are classified as Standard Industrial Classification code 7542.

(2) Companies, governmental entities, taxi companies, parcel delivery companies, or similar entities that have their own motor vehicle cleaning facilities.

(3) This subchapter only applies to the discharge of wastewater generated from washing the exterior of vehicles.

(4) This subchapter does not apply to establishments, companies, or entities engaged in motor vehicle washing when the vehicles being washed are used for any of the following:

(A) transportation of municipal or industrial solid waste, including hazardous waste;

(B) transportation of hazardous materials or vehicles subject to placarding or labeling because of such transportation;

(C) exploration, production, or development of oil, natural gas, or geothermal resources.

(5) This subchapter does not apply to establishments, companies, or entities engaged in motor vehicle washing when the vehicles being washed consist of the following types:

(A) semi-tractor trailer vehicles or similar carriers involved in transportation activities described in paragraph (4)(A) and (B) of this subsection.

(B) vehicles, trucks, or other equipment involved in transportation which, in the judgement of the executive director, has the potential to release toxic substances when the equipment's exterior is washed.

(b) Discharges are allowable under this subchapter only by those registrants of facilities which have a certificate of registration issued by the executive director under §321.213 of this title (relating to Certificate of Registration), §321.215 of this title (relating to General Requirements for Discharge) and §321.216 of this title (relating to Specific Requirements for Discharge). For new facilities, a certificate of registration issued by the executive director under §§321.213, 321.215, and 321.216 of this title shall be obtained prior to discharge of wastewater from the subject facility.

(c) Facilities which do not meet the requirements of §321.215 and §321.216 of this title and do not discharge or transport facility wastewater to a publicly owned treatment works (POTW) which has a wastewater discharge permit issued by the agency must apply for an emergency order, temporary order, or permit as provided by Chapter 305, Subchapter B of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to water in the state.

(d) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26.

(e) No motor vehicle cleaning facility may obtain registration under this subchapter, if it is located within the service area of a POTW or within a similar service area which provides for the collection and disposal of wastewater. No self-service or coin-operated motor vehicle cleaning facility may obtain registration under this chapter. Such facilities must either discharge facility wastewater into the POTW, obtain authorization by individual permit issued pursuant to Chapter 305 of this title (relating to Consolidated Permits), or otherwise dispose of wastewater in a manner which complies with commission regulations.

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 N. HANDLING OF WASTES FROM COMMERCIAL FACILITIES ENGAGED IN LIVERSTOCK TRAILER CLEANING

30 TAC §321.253

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; and TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011.

§321.253. Purpose and Applicability.

(a) The purpose of this subchapter is to regulate by rule the removal, containment, treatment and disposal of wastes occurring at commercial livestock trailer cleaning facilities. Certificates of registration issued under this chapter are subject to Chapter 50, Subchapter G [C] of this title (relating to Action by the Executive Director). The requirements of this subchapter apply to only those livestock trailer cleaning facilities that are described in both paragraphs (1) and (2) of this subsection:

(1) The facility is commercial. A facility is "commercial" if the owner or operator provides trailer cleaning services to other persons for profit, or provides such service in conjunction with other services.

(2) The facility utilizes evaporation ponds, storage pond(s) or other pond(s) with land application as a means of treatment and disposal.

(b) The requirements of this subchapter do not apply to other livestock trailer cleaning facilities.

(c) A livestock trailer cleaning facility that is subject to the requirements of this subchapter must also comply with other commission rules, if applicable.

(d) Executive director authorization by a registration issued pursuant to this subchapter is not required if untreated facility wastewater is either discharged or transported to a POTW which has a wastewater permit issued by the agency.

(e) Regardless of the applicability of [Notwithstanding] subsection (a) of this section, a livestock trailer cleaning facility that is otherwise subject to the requirements of this subchapter, but which is a component of a feedlot or concentrated animal feeding operation regulated under the requirements of this chapter or regulated by permit as provided by Chapter 305 of this title (relating to Consolidated Permits), is not subject to the requirements of this subchapter.

(f) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26.

(g) New livestock trailer cleaning operations are prohibited from being registered under this rule when located on the Edwards Aquifer Recharge Zone. New livestock trailer cleaning operations located on the Edwards Aquifer Recharge Zone are required to submit an application for permit to the agency's Wastewater Permits Section (MC 148).

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§330.57, 330.69, and 330.411.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 331, 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. The proposed amendments to §§330.57, 330.69, and 33.0411 would replace obsolete text and update cross-references.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

§330.57, Permit and Registration Applications for Municipal Solid Waste Facilities

The commission proposes to amend §330.57(i)(3)(C) by updating the reference to the commission's Office of Public Assistance to the Public Education Program.

§330.69, Public Notice for Registrations

The commission proposes to amend §330.69(b) by updating the cross-reference from §39.501(e)(3) and (4), which is concurrently proposed for amendment, to §39.501(e)(5) and (6). The updated cross-reference is based on changes made to §39.501 after the original effective date of March 27, 2006, and is not affected by the concurrently proposed changes to §39.501. The commission also proposes to amend subsection (b) by removing obsolete text regarding the applicability of the section for registrations filed before amendments to Chapter 330 adopted in 2006.

§330.411, Assessment of Corrective Measures

The commission proposes to amend §330.411(d) by updating the cross-reference from §39.501(e)(3) to §39.501(e)(5).

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters, will update cross-references of rules related to public notice of certain types of permit applications and other types of actions.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public notice and public participation in certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. These changes will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect. This rulemaking addresses necessary changes in order to update cross-references and remove obsolete language in various procedural and permitting program rules.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §§330.57, 330.69, and 330.411 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments of §§330.57, 330.69, and 330.411 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

Sections 330.57, 330.69, and 330.411 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §330.57, §330.69

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amended sections are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters L and M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities.

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I - IV. Parts I - IV of the application shall be required before the application is declared administratively complete in accordance with Chapter 281 of this title (relating to Applications Processing). The owner or operator shall submit a complete application, containing Parts I - IV, before a hearing can be conducted on the technical design merits of the application. An owner or operator applying for a permit may request a land-use only determination. If the executive director determines that a land-use only determination is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. The executive director may process a partial permit application to the extent necessary to determine land-use compatibility alone. If the facility is determined to be acceptable on the basis of land use, the executive director will consider technical matters related to the permit application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §39.419 of this title (relating to Notice of Application and Preliminary Decision). A complete application, consisting of Parts I - IV of the application, shall be submitted based upon the results of the land-use only public hearing. Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are required to submit all parts of the application except for those items pertaining to Subchapters H and J of this chapter (relating to Liner System Design and Operation; and Groundwater Monitoring and Corrective Action). Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are exempt from the geology report requirements of §330.63(e) of this title (relating to Contents of Part III of the Application) except for the requirement to submit a soil boring plan in accordance with §330.63(e)(4) and (e)(4)(A) of this title, and the information requested in §330.63(e)(6) of this title.

(b) Registration application. A registration application for a municipal solid waste facility is also divided into Parts I - IV, but is not subject to a hearing request or to the administrative completeness determinations of Chapter 281 of this title.

(c) Parts of the application.

(1) Part I of the application consists of the information required in §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits), §305.45 of this title (relating to Contents of Application for Permit) and §330.59 of this title (relating to Contents of Part I of the Application).

(2) Part II of the application describes the existing conditions and character of the facility and surrounding area. Part II of the application shall consist of the information contained in §330.61 of this title (relating to Contents of Part II of the Application). Parts I and II of a permit application must provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code, §361.069. Part II may be combined with Part I of the application or may be submitted as a separate document. An owner or operator must submit Parts I and II of the permit application before a land-use determination is made in accordance with subsection (a) of this section.

(3) Part III of the application contains design information, detailed investigative reports, schematic designs of the facility, and required plans. Part III shall consist of the documents required in §330.63 of this title.

(4) Part IV of the application contains the site operating plan that shall discuss how the owner or operator plans to conduct daily operations at the facility. Part IV shall consist of the documents required in §330.65 of this title (relating to Contents of Part IV of the Application).

(d) Required information. The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site. It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners. Failure of the owner or operator to provide complete information as required by this chapter may be cause for the executive director to return the application without further action in accordance with §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review). Submission of false information shall constitute grounds for denial of the permit or registration application.

(e) Number of copies.

(1) Applications shall be initially submitted in four copies. The owner or operator shall furnish up to 18 additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(2) For permit applications initially submitted to the executive director, the owner or operator shall also furnish Parts I and II, and any subsequent revisions to Parts I and II, to the regional council of governments.

(f) Preparation. Preparation of the application must conform with Texas Occupations Code, Texas Engineering Practice Act, Chapter 1001 and Texas Geoscience Practice Act, Chapter 1002.

(1) The responsible engineer shall seal, sign, and date the title page of each bound engineering report or individual engineering plan in the application and each engineering drawing as required by Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b), and in accordance with 22 TAC §851.156 (relating to Geoscientist's Seals).

(3) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(g) Application format.

(1) Applications shall be submitted in three-ring, "D"-ring, loose-leaf binders.

(2) The title page shall show the name of the project; the municipal solid waste permit application number, if known; the name of the owner and operator; the location by city and county; the date the part was prepared; and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(3) The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(4) The narrative of the report shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(7) Dividers and tabs are encouraged.

(h) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing shall have a:

(A) dated title block;

(B) bar scale at least one-inch long;

(C) revision block;

(D) responsible engineer's or geoscientist's seal, if required; and

(E) drawing number and a page number.

(5) Each map or plan drawing shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legend.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

(i) Posting application information.

(1) Upon submittal of an application, the owner or operator shall provide a complete copy of any application that requires public notice, except for authorizations at Type IAE and Type IVAE landfill facilities, including all revisions and supplements to the application, on a publicly accessible internet website [~~Web site~~], and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.

(2) The commission shall post on its website [~~Web site~~] the identity of all owners and operators filing such applications and the Web address link required by this subsection.

(3) For applications for new permits or major amendments, an owner or operator shall post notice signs at the site within 30 days of the executive director's receipt of an application. This sign posting is for informational purposes only. Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) identify as appropriate that the application is for a proposed permitted facility or an amendment to a permitted facility;

(C) include the words "For further information on how the public may participate in Texas Commission on Environmental Quality (TCEQ) permitting matters, contact TCEQ," the toll free telephone number for the Public Education Program [~~Office of Public Assistance~~], and the agency's website [~~Web site~~] address;

(D) include the name and address of the owner or operator;

(E) include the telephone number of the owner or operator; and

(F) remain in place and legible until the close of the final comment period.

(4) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line parallel to a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the permitted facility.

(5) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(6) The executive director may approve variances from the requirements of paragraphs (3), (4), and (5) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this subsection.

§330.69. Public Notice for Registrations.

(a) Notice to local governments. For mobile liquid waste processing unit registration applications only, upon filing a registration application, the owner or operator shall mail notice to the city, county, and local health department of any local government in which operations will be conducted notifying local governments that an application has been filed. Proof of mailing shall be provided to the executive director in the form of return receipts for registered mail. Mobile liquid waste processing unit registration applications are not subject to public meeting or sign-posting requirements under subsection (b) of this section.

(b) Opportunity for public meeting and posting notice signs. The owner or operator shall provide notice of the opportunity to request a public meeting and post notice signs for all registration applications not later than 45 days of the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site. The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings) or by Texas Health and Safety Code, §361.111(c). Notice of a public meeting shall be provided as specified in §39.501(e)(5) and (6) [~~§39.501(e)(3) and (4)~~] of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. [~~Applications for registrations filed before the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) become effective are subject to the former rule requirements to conduct a public meeting.~~] Applications for registrations filed after the 2006 Revisions become effective are subject to the 2006 Revisions requirements to provide notice of the opportunity to request a public meeting. The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001, Administrative Procedures [~~Procedure~~] Act. At the owner's or operator's expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements.

(1) Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) be headed by the words "PROPOSED MUNICIPAL SOLID WASTE FACILITY";

(C) include the words "REGISTRATION NO.," the number of the registration, and the type of registration;

(D) include the words "for further information contact";

(E) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate commission permitting office;

(F) include the name of the owner or operator, and the address of the appropriate responsible official;

(G) include the telephone number of the owner or operator;

(H) remain in place and legible until the period for filing a motion to overturn has expired. The owner or operator shall provide a verification to the executive director that the sign posting was conducted according to the requirements of this section; and

(I) describe how persons affected may request that the executive director and applicant conduct a public meeting.

(2) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(3) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(4) The executive director may approve variances from the requirements of paragraphs (1) and (2) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those subparagraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this subparagraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(c) Notice of final determination. 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. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), 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 under §50.139 of this title (relating to Motion to Overturn 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 land ownership map and landowners list required by §330.59 of this title (relating to Contents of Part I of the Application), and to other persons who timely filed public comment in response to public notice.

(d) Motion to overturn. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139 of this title. The criteria regarding motions to overturn shall be explained in public notices given under Chapter 39 of this title (relating to Public Notice) and §50.133 of this title.

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 October 25, 2019.

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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) 239-2678

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SUBCHAPTER J. GROUNDWATER MONITORING AND CORRECTIVE ACTION

30 TAC §330.411

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas. The amended section is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters L and M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§330.411. Assessment of Corrective Measures.

(a) Within 90 days of finding that any of the 40 Code of Federal Regulations Part 258, Appendix II constituents have been detected at a statistically significant level above the groundwater protection standards defined under §330.409(h), (i), or (j) of this title (relating to Assessment Monitoring Program), the owner or operator shall initiate an assessment of corrective measures. Such an assessment shall be completed within 180 days of initiating the assessment.

(b) The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in §330.409 of this title.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under §330.413 of this title (relating to Selection of Remedy), addressing at least the following:

(1) performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) time required to begin and complete the remedy;

(3) costs of remedy implementation; and

(4) institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy or remedies.

(d) The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of a remedy, in a public meeting with interested and affected parties. The owner or operator shall arrange for the meeting and provide notice in accordance with the provisions of §39.501(e)(5) [~~§39.501(e)(3)~~] of this title (relating to Application for Municipal Solid Waste 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 October 25, 2019.

TRD-201903937
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER L. GENERAL PERMIT AUTHORIZING USE OF A CLASS I INJECTION WELL TO INJECT NONHAZARDOUS DESALINATION CONCENTRATE OR NONHAZARDOUS DRINKING WATER TREATMENT RESIDUALS

30 TAC §331.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §331.202.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50,

55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330, 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 331.202 is proposed to be amended by updating cross-references.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§331.202, Public Notice, Public Meetings, and Public Comment

The commission proposes to amend §331.202(c)(1) and (d)(4) to update the cross-references from §39.11, which is concurrently proposed for repeal, to §39.411.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update cross-references.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the update to obsolete cross-references.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §331.202 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §331.202 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory

authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §331.202 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section §331.202 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.

§331.202. Public Notice, Public Meetings, and Public Comment.

(a) Applicability. The requirements of subsections (b) - (e) of this section apply to processing a new general permit, an amendment, renewal, revocation, or cancellation of a general permit.

(b) Notice of a draft general permit shall be published as follows:

(1) Notice shall be published in the *Texas Register* and in at least one newspaper of statewide or regional circulation; and

(2) The public notice shall be published not later than the 30th day before the commission considers the approval of a general permit.

(c) The contents of a public notice of a draft general permit shall:

(1) include the applicable information described in §39.411 [~~§39.11~~] of this title (relating to Text of Public Notice);

(2) include an invitation for written comments by the public to the commission regarding the proposed draft general permit; and

(3) specify a comment period of at least 30 days.

(d) Requirements relating to public meetings are as follows:

(1) The agency may hold a public meeting to provide an additional opportunity for public comment and shall hold such a public meeting when the executive director determines, on the basis of requests, that a significant degree of public interest in a draft general permit exists.

(2) Notice of a public meeting shall be by publication in the Texas Register not later than the 30th day before the date of the meeting.

(3) Notice of a public meeting shall be mailed to the following:

(A) the county judge of the county or counties in which permittees under the general permit could be located;

(B) persons who filed public comment or request for a public meeting on or before the deadline for filing public comment or request for a public meeting; and

(C) any other person the executive director or chief clerk may elect to include.

(4) The contents of a notice of a public meeting shall include the applicable information described in §39.411 [~~§39.11~~] of this title. Each notice must include an invitation for written or oral comments by the public regarding the draft general permit.

(5) The public comment period shall automatically be extended to the close of any public meeting held by the agency on the proposed general permit.

(e) If the agency receives public comment during the comment period relating to issuance of a general permit, the executive director shall respond in writing to these comments, and this response shall be made available to the public and filed with the chief clerk at least ten days before the commission considers the approval of the general permit. The response shall address all written comments received during the comment period and oral or written comments received during any public meeting held by the agency. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(1) The commission shall issue its written response to comments on the general permit at the same time the commission issues or denies the general permit.

(2) A copy of any issued general permit and response to comments shall be made available to the public for inspection at the agency's Austin office and also in the appropriate regional offices.

(3) A notice of the commission's action on the proposed general permit and a copy of its response to comments shall be mailed to each person who made a comment during the comment period.

(4) A notice of the commission's action on the proposed general permit and the text of its response to comments shall be published in the *Texas Register*.

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 October 25, 2019.

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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) 239-2678

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CHAPTER 332. COMPOSTING

SUBCHAPTER C. OPERATIONS REQUIRING A REGISTRATION

30 TAC §332.35

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend 30 TAC §332.35.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330, 331, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 332.35 is proposed to be amended by updating an obsolete cross-reference.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§332.35, Registration Application Processing

The commission proposes to amend §332.35(e) to update the cross-reference from §50.39, which is concurrently proposed

for repeal, to §50.139 (Motion to Overturn Executive Director's Decision). Additionally, the commission proposes to amend §332.35(e) to improve readability.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the removal of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §332.35 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §332.35 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in thestatutory authority section of this preamble. Therefore, thisrulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §332.35 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 332.35 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:*https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§332.35. Registration Application Processing.

(a) An application shall be submitted to the executive director. When an application is administratively complete, the executive director shall assign the application an identification number.

(b) Public Notice.

(1) When an application is administratively complete the chief clerk shall mail notice to adjacent landowners. The chief clerk also shall mail notice to other affected landowners as directed by the executive director.

(2) When an application is technically complete the chief clerk shall mail notice to adjacent landowners. The chief clerk shall also mail notice to other affected landowners as directed by the executive director. The applicant shall publish notice in the county in which the facility is located, and in adjacent counties. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice shall explain the method for submitting a motion for reconsideration.

(3) Notice issued under paragraphs (1) or (2) of this subsection shall contain the following information:

(A) the identifying number given the application by the executive director;

(B) the type of registration sought under the application;

(C) the name and address of the applicant(s);

(D) the date on which the application was submitted; and

(E) a brief summary of the information included in the application.

(c) The executive director or his designee shall, after review of any application for registration of a compost facility determine if he will approve or deny an application in whole or in part. The executive director shall base his decision on whether the application meets the requirements of this subchapter and the requirements of §332.4 of this title (relating to General Requirements).

(d) At the same time that the executive director's decision is mailed to the applicant, a copy or copies of this decision shall also be mailed to all adjacent and affected landowners, residents, and businesses.

(e) [~~Motion for reconsideration.~~] The applicant or a person affected by the executive director's final approval of an application may file with the chief clerk a motion to overturn [~~for reconsideration~~], under §50.139 [~~§50.39(b)-(f)~~] of this title (relating to Motion to Overturn Executive Director's Decision) [~~for Reconsideration), of the executive director's final approval of an application~~].

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 October 25, 2019.

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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) 239-2678

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CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS SUBCHAPTER K. STORAGE, TREATMENT, AND REUSE PROCEDURES FOR PETROLEUM-SUBSTANCE CONTAMINATED SOIL

30 TAC §334.484

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §334.484, concerning Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 334.484 is proposed to be amended by updating an obsolete cross-reference.

The commission is also concurrently proposing amendments to Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§334.484. Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities

The commission proposes to amend §334.484(h) to update the cross-reference from §50.39, which is concurrently proposed for repeal, to §50.139 (Motion to Overturn Executive Director's Decision). Additionally, the commission proposes to amend §334.484(n) to improve readability.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the removal of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §334.484 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §334.484 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §334.484 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 334.484 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.*

File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; TWC, §26.345, which authorizes the commission to adopt rules necessary to develop a regulatory program for underground and aboveground storage tanks; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, 26.345; and TWC, Chapter 26, Subchapter I.

§334.484. Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities.

(a) A person shall submit the required application and receive the appropriate registration issued after December 27, 1996, prior to storing or treating petroleum-substance wastes at a new Class A facility or treating soil utilizing a new Class B waste management facility.

(b) A person may not commence physical construction of a new Class A or utilize a Class B petroleum-substance waste management facility without first having submitted the required application and received the appropriate registration unless otherwise authorized by the agency.

(c) Any person who intends to store or treat petroleum-substance waste at a Class A or Class B facility after December 27, 1996, must submit an application for registration on a form approved by the agency. Such person must submit information to the executive director which is sufficiently detailed and complete to enable the agency to determine whether such storage or treatment is compliant with the terms of this subchapter. Such information shall include, at a minimum:

(1) information concerning the location of the facility;

(2) identification of the facility owner, facility operator, and landowner;

(3) the job descriptions of all key operating personnel;

(4) documentation on the proposed access routes to the facility, proposed daily volumes of traffic associated with the facility, and confirmation on the suitability of roads leading to the facility;

(5) waste storage, management, handling, and shipping methods;

(6) waste treatment methods;

(7) waste sampling and analytical methods;

(8) disposition or reuse documentation;

(9) recordkeeping requirements;

(10) security and emergency procedures;

(11) facility closure plan and closure cost estimate (see §334.508 of this title (relating to Closure Requirements Applicable to Class A and Class B Facilities));

(12) facility plans and specifications;

(13) site maps and vicinity maps;

(14) documentation on the land use in the vicinity of the facility;

(15) identification of all potential contaminant receptors in the vicinity, including any water wells within 1,000 feet;

(16) documentation on the financial assurance required (see Chapter 37, Subchapter K of this title (relating to Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, and Reuse Facilities));

(17) documentation on all required restrictive easements;

(18) the geology and hydrogeology where the facility is located;

(19) documentation on the effectiveness of the treatment method;

(20) documentation of the receipt of any additional authorization required by any other federal, state, or local regulatory agency; and

(21) any other information as the agency may deem necessary to determine whether the facility and operation thereof will comply with the requirements of this subchapter. The application shall be submitted to the agency's central office.

(d) If the applicant is other than an individual, the application must be signed by the owner or operator of the facility, the president or chief executive officer of the company, or all the partners of the company.

(e) Any person who stores or treats petroleum-substance waste shall have the continuing obligation to immediately provide written notice to the agency of any changes or additional information concerning the information submitted to the commission or activities authorized in any registration within 15 days of the change or from the date the additional information was acquired.

(f) Any information required by this subsection must be submitted to the agency's office in Austin.

(g) The registration is not transferable to any other facility or facility owner. Any transfer of ownership shall require a change in registration of the facility. However, a change in registration of a facility shall not relieve the transferor of any liability which may have been incurred prior to the change in registration.

(h) The applicant or a person affected by the executive director's final approval or denial of an application for registration may file with the chief clerk of the commission a motion to overturn [~~for reconsideration~~] under §50.139 [~~§50.39(b) - (f)~~] of this title (relating [~~relation~~] to Motion to Overturn Executive Director's Decision) [~~for Reconsideration) of the agency's final approval or denial of an application for registration~~].

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 October 25, 2019.

TRD-201903940
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.21

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §335.21.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 335.21 is proposed to be amended by updating an obsolete cross-reference.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§335.21, Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations

The commission proposes to amend §335.21(3) to update the cross-reference from §50.39, which is concurrently proposed for repeal, to §50.139 (Motion to Overturn Executive Director's Decision). Additionally, the commission proposes to amend §335.21(3) to improve readability.

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed

rule is in effect. This rulemaking addresses the removal of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §335.21 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §335.21 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §335.21 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 335.21 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environ-

mental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:*https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§335.21. Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations.

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed flame combustion devices as boilers, and applications for non-waste determinations:

(1) the owner or operator must apply to the executive director for the variance. The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) or §335.20 of this title (relating to Variance To Be Classified as a Boiler);

(2) the owner or operator must apply to the executive director for the non-waste determination. The application must address the relevant criteria referenced in §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations);

(3) the executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public meeting upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the public meeting (if any). Any person affected by a final decision of the executive director may file with the chief clerk a motion to overturn [~~for reconsideration~~], in accordance with §50.139 [~~§50.39~~] of this title (relating to Motion to Overturn Executive Director's Decision [~~for Reconsideration~~]); [:]

(4) in the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in §335.19 or §335.20 of this title or §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations), upon which a variance or non-waste determination has been based, the applicant must send a written description of the change in circumstances to the executive director. The executive director may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination;

(5) variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, owners or operators of facilities must re-apply for a variance or non-waste determination. If an owner or operator of a facility re-applies for a variance or non-waste determination within six months, the owner or operator of the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the executive director; and

(6) owners or operators of facilities receiving a variance or non-waste determination must provide notification as required by §335.26 of this title (relating to Notification Requirement for Hazardous Secondary Materials).

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 October 25, 2019.

TRD-201903941
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

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CHAPTER 350. TEXAS RISK REDUCTION PROGRAM
SUBCHAPTER D. DEVELOPMENT OF PROTECTIVE CONCENTRATION LEVELS

30 TAC §350.74

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §350.74, concerning Development of Risk-Based Exposure Limits.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applica-

ble to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, and 335, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Section 350.74 is proposed to be amended by updating a cross-reference.

The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as defining acronyms. These changes are non-substantive and generally are not specifically discussed in this preamble.

§350.74, Development of Risk-Based Exposure Limits

The commission proposes to amend §350.74(j)(2)(K) to update the cross-reference from §50.39, which is concurrently proposed for repeal, to §50.139 (Motion to Overturn Executive Director's Decision).

Fiscal Note: Costs to State and Local Government

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

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will update a cross-reference.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendment is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will improve readability and minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rule is in effect. This rulemaking addresses the removal of an obsolete cross-reference.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §350.74 is procedural in nature and is not specif-

ically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it 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. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment of §350.74 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in thexstatutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §350.74 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed amendment affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Effect on Sites Subject to the Federal Operating Permits Program

Section 350.74 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends this rule.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§350.74. Development of Risk-Based Exposure Limits.

(a) General requirement. The person shall use the criteria provided in subsections (b) - (j) of this section and the risk-based exposure limit (RBEL) equations provided in the following figures, as applicable, to establish RBELs appropriate for the type of chemical of concern (COC), the complete and reasonably anticipated to be completed

exposure pathways, receptors, and land uses. The person shall establish RBELs for carcinogenic COCs and noncarcinogenic COCs using the default exposure factors provided in the following figure for residents and commercial/industrial workers, unless the executive director approves the use of alternate exposure factors in accordance with subsection (j) of this section.

Figure: 30 TAC §350.74(a) (No change.)

(b) Air inhalation RBEL. The air inhalation RBEL ($^{Air}RBEL_{Inh}$) is the protective concentration of a COC in air at the point of exposure (POE) for human inhalation.

(1) Under Tiers 2 and 3 as described in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), the person may use the lower of available eight-hour [~~eight~~ ~~hour~~] time-weighted average occupational inhalation criteria; (i.e., Occupational Safety and Health Administration Permissible Exposure Limits, or American Conference of Governmental Industrial Hygienists Threshold Limit Values), as $^{Air}RBEL_{Inh}$ for inhalation pathways for commercial/industrial workers within the limits of affected commercial/industrial properties which have a health and safety plan in place. The health and safety plan shall be designed to ensure compliance with the applicable occupational inhalation criteria and require the monitoring of COC levels in the working air environment, and specify actions that will be taken in the event of exceedance of the occupational inhalation criteria. When occupational inhalation criteria are used, the person shall provide documentation of the health and safety plan, certify that the plan is followed, and demonstrate that the off-site receptors are protected as required by §350.71(h) of this title (relating to General Requirements). The use of occupational inhalation criteria as RBELs shall require the person to comply with the institutional control requirements in §350.111(b) and (b)(14) of this title (relating to Use of Institutional Controls).

(2) The air RBELs may not exceed any other applicable federal or state air quality standards.

(c) Soil dermal contact RBEL. The soil dermal contact RBEL ($^{Soil}RBEL_{Derm}$) is the protective concentration of a COC at the POE in soil based upon direct dermal contact to soil by humans. The soil dermal contact RBEL shall also be based on COC-specific values for dermal absorption fraction (ABS.d) and gastrointestinal absorption fraction (ABS_{GI}) provided in the following figure, unless the executive director approves the use of alternate ABS.d and ABS_{GI} values in accordance with subsection (j)(1)(A) and (B) of this section. It is not necessary to calculate a soil dermal contact RBEL for COCs with vapor pressure in mm of Hg greater than or equal to 1.

Figure: 30 TAC §350.74(c) (No change.)

(d) Soil ingestion RBEL. The soil ingestion RBEL ($^{Soil}RBEL_{Ing}$) is protective concentration of a COC at the POE in soil based upon human ingestion.

(e) Vegetable ingestion RBELs. The vegetable RBELs ($^{AbgVeg}RBEL_{Ing}$ and $^{BgVeg}RBEL_{Ing}$) are the protective concentration of a COC in aboveground vegetables and below-ground vegetables, respectively, for ingestion by residents. The person shall establish RBELs for ingestion of aboveground vegetables for all carcinogenic and noncarcinogenic COCs which are metals. In addition, the person shall establish RBELs for ingestion of below-ground vegetables for all carcinogenic and noncarcinogenic COCs with a dimensionless Henry's Law Constant less than 0.03, as shown in the figure in §350.73(f) of this title (relating to Determination and Use of Human Toxicity Factors and Chemical Properties), when either of the following criteria are met:

(1) the COC is a metal; or

(2) the COC has a logarithmic octanol-water partition coefficient (Log K_{ow}) greater than four as shown in the figure in §350.73(f) of this title (relating to Determination and Use of Human Toxicity Factors and Chemical Properties); or

(f) Groundwater ingestion RBEL.

(1) The groundwater ingestion RBEL ($^{GW}RBEL_{Ing}$) is the protective concentration of a COC at the POE in groundwater based upon human ingestion of groundwater. However, if available, the person shall use the lower of the two values established under paragraphs (2) and (3) of this subsection instead.

(2) The person shall use the primary maximum contaminant level (MCL) as provided in 40 Code of Federal Regulations Part 141, as amended, or the most currently available federal action level for drinking water (e.g., lead and copper) as the RBEL when available for the COC.

(3) The person shall use the secondary MCLs established for individual COCs as provided in 40 Code of Federal Regulations Part 143, as amended, as RBELs, or other scientifically valid published criteria in cases where COCs are present at concentrations which present objectionable characteristics such as taste or odor (e.g., methyl tertiary butyl ether) under the following circumstances:

(A) when the COCs are present in class 1 groundwater;

(B) when the COCs are present in class 2 groundwater that is within 1/2 mile of a well used to supply drinking water and is also within or is likely to migrate, based upon the chemical properties of the COCs and the hydrogeology, to the groundwater production zone of such drinking water supply well; or

(C) when the COCs are present in class 2 groundwater and there are no alternative water supplies available.

(g) Class 3 groundwater RBEL. The class 3 groundwater RBEL ($^{GW}RBEL_{Class\ 3}$) is the acceptable concentration of a COC at the POE in class 3 groundwater.

(h) Surface water RBEL. The surface water RBEL ($^{SW}RBEL$) is the protective concentration of a COC at the POE in surface water. To establish $^{SW}RBEL$ for a COC, the person shall determine the lowest value from paragraphs (1) - (5) of this subsection for each COC, unless the person has sufficient surface water quality information specific to the particular surface water body to support an adjustment to the RBEL in accordance with paragraph (6) of this subsection. The $^{SW}RBEL$ value determined pursuant to paragraphs (1) - (6) of this subsection may require modification in response to the requirements of paragraphs (7) and (8) of this subsection. The $^{SW}RBEL$ value for a given COC shall be protective of relevant downgradient water bodies in consideration of the water body use (e.g., designated drinking water supply or sustainable fishery), the water body type (e.g., estuary or perennial freshwater stream), the standards applicable to the type of water body/use, and the fate and transport characteristics of the COC in question at the particular affected property.

(1) The person shall apply the lower of the acute or chronic criteria for fresh or marine waters as applicable, based on the classification of the surface water, to protect aquatic life as provided in §307.6, Table 1 of this title (relating to Toxic Materials), as amended. The person shall determine the applicability of aquatic life criteria related to the water body aquatic life use and flow conditions in accordance with the procedures contained in §§307.3, 307.4, and 307.6 [~~§307.3, §307.4, and §307.6~~] of this title (relating to Definitions and Abbreviations, General Criteria, and Toxic Materials, respectively), and the agency's *Implementation Procedures,* as amended, as defined in §350.4 of this title (relating to Definitions and Acronyms), as amended. For

fresh waters, the person shall calculate aquatic life criteria for metals with hardness-dependent criteria using the hardness value for the nearest downstream classified segment, as listed in the agency's *Implementation Procedures,* as amended. Where no value is provided in the *Implementation Procedures,* a hardness value of 50 mg/l $CaCO_3$ shall be used. When applicable, the person shall convert total metal concentrations in surface water or groundwater to dissolved concentrations as described in the agency's *Implementation Procedures,* as amended. The person may use the basin-specific pH values provided in §307.6, Table 2 of this title, as amended, relevant to the particular affected property for purposes of determining the appropriate values for the pH dependent criteria. The person shall use the total suspended solids concentration for the nearest classified segment, as listed in the agency's *Implementation Procedures,* as amended.

(2) The person shall apply the human health criteria to protect drinking water and fisheries as provided in Table 3 of §307.6 of this title, as amended. When applicable, the person shall convert total metal concentrations in surface water or groundwater to dissolved concentrations as described in the agency's *Implementation Procedures,* as amended. The person shall determine the applicability of human health criteria according to the water body uses (e.g., public water supply, sustainable fishery, incidental fishery, and contact recreation) in accordance with the procedures contained in §307.3 and §307.6 of this title, as amended, and the *Implementation Procedures,* as amended. When a water body is not being evaluated as a drinking water source, the person must determine the necessity to evaluate exposure pathways associated with contact recreation such as incidental ingestion of surface water and dermal contact with surface water. The person shall use the total suspended solids concentration for the nearest classified segment, as listed in the agency's *Implementation Procedures,* as amended.

(3) The person shall apply the effluent limitations specified in Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG830000, as amended, for any release of groundwater or storm water that has been impacted by petroleum fuel (as defined in the general permit).

(4) The person shall apply United States Environmental Protection Agency [~~EPA~~] guidelines or alternate provisions in accordance with §307.6(c)(7) of this title, as amended, when criteria for aquatic life protection are not provided for a COC in §307.6 of this title, Table 1, as amended. In addition, the person shall apply federal guidance criteria (i.e., lower of a federal numerical criterion, MCL, or equivalent state drinking water guideline) or alternate provisions in accordance with §307.6(d)(8) of this title, as amended, when human health criteria for a COC are not provided in Table 3 of §307.6 of this title, as amended.

(5) The person shall apply the numerical criteria, as appropriate, for chlorides, sulfates, total dissolved solids, and pH for classified segments as specified in §307.10(1) of this title (relating to Appendices A - E), as amended.

(6) The person may apply additional provisions where data on surface water quality for a specific surface water body at the affected property is available or can be reasonably obtained.

(A) The person may determine property-specific hardness, based on sampling data, for calculating metals criteria in accordance with the procedures contained in the agency's *Implementation Procedures,* as amended.

(B) The person may determine property-specific total suspended solids, based on sampling data, for estimating "dissolved" metals in accordance with the *Implementation Procedures,* as amended.

(C) The person may determine the actual pH of the particular surface water body at the affected property.

(7) The additional numeric and narrative criteria listed in subparagraphs (A) and (B) of this paragraph may require development of a surface water RBEL (e.g., where a nutrient is a COC) or modification to the surface water RBEL (e.g., lower a RBEL value to minimize foaming on the water's surface) determined pursuant to paragraphs (1) - (5) of this subsection.

(A) General criteria related to aesthetic parameters, nutrient parameters, and salinity in accordance with §307.4(b), (e), and (g) of this title (relating to General Criteria), as amended.

(B) General provisions related to the preclusion of adverse toxic effects on aquatic and terrestrial life, livestock, or domestic animals in accordance with §307.6(b) of this title, as amended.

(8) If the executive director determines that the release has the potential to lower the surface water dissolved oxygen, then the executive director may require the person to apply the dissolved oxygen criteria for classified segments specified in §307.10(1) of this title, as amended, or the dissolved oxygen criteria for unclassified waters specified in §307.10(4) of this title, as amended, §307.4(h) of this title, as amended, and §307.7(b)(3)(A) of this title (relating to Site Specific Uses and Criteria), as amended.

(i) Aesthetics. For COCs for which a RBEL cannot be calculated by the procedures of this section, or the RBEL concentration for the COC otherwise adversely impacts environmental quality or public welfare and safety, presents objectionable characteristics (e.g., taste, odor), or makes a natural resource unfit for use, the person shall comply with paragraphs (1) - (3) of this subsection as appropriate. For response actions which are triggered for an area solely for purposes of this subsection (i.e., there is no other human health or ecological hazard remaining), the executive director will evaluate the seriousness, probable longevity of the matter, and suitability of the proposed remedy with the landowner in order to site-specifically determine whether or not institutional controls and financial assurance are warranted. The person shall provide all information reasonably necessary to support such a determination to the executive director. The default presumption is that financial assurance and institutional controls are required for exposure prevention remedies. If the executive director determines that institutional controls and financial assurance are not warranted, then persons shall not be required to comply with the provisions of §350.31(g), §350.33(e)(2)(C) and §350.111(b)(3) or (6) of this title (relating to General Requirements for Remedy Standards, Remedy Standard B, and Use of Institutional Controls), specifically relating to the physical control matters for the portion of affected property with the aesthetics issue.

(1) In accordance with §101.4 of this title (relating to Nuisance), as amended, the person may be required by the executive director to address COCs which present objectionable odors.

(2) The maximum total soil concentration of COCs which are liquid at standard temperature and pressure shall not exceed 10,000 mg/kg within the soil interval of 0 - 10 feet, unless it can be demonstrated that:

(A) no free liquids (e.g., no mobile NAPL) or sludges exist; or

(B) higher concentrations do not adversely impair surface use of the affected property.

(3) Other scientifically valid published criteria such as, but not limited to, non-COC specific secondary MCLs for water may be required by the executive director to be used as the RBEL.

(j) Requirements for variance to default RBEL exposure factors.

(1) Under Tiers 2 or 3 as provided in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation) and with prior executive director approval, the person may vary the following default exposure factors shown in the figures in subsections (a) and (c) of this section based on conditions or exposure levels at a particular affected property and in accordance with the conditions specified. A person shall provide the supporting documentation to justify the use of such alternative factors to the executive director.

(A) Gastrointestinal absorption fraction (ABS_{GI}). A person or the executive director may use an alternative scientifically justifiable gastrointestinal absorption fraction value. Only in cases where the gastrointestinal absorption fraction is less than 50% shall the oral slope factor and oral reference dose be adjusted using equation RBEL-2 as shown in the figure in subsection (a) of this section, as applicable, to calculate the corresponding dermal slope factor and dermal reference dose. The person shall not use the gastrointestinal absorption fraction to modify the oral slope factor or oral reference dose for any exposure pathway other than the dermal exposure pathway. In the event the executive director determines a more scientifically valid gastrointestinal absorption fraction, that fraction shall be presumed to be the appropriate fraction and the person shall use that fraction unless a person rebuts that value with a scientifically valid study or by other credible published authority.

(B) Dermal absorption fraction (ABS.d). A person or the executive director may conduct a scientifically valid study using property-specific soils or may use alternative scientifically justifiable dermal absorption values. In the event the executive director determines a more scientifically valid dermal absorption fraction, that fraction shall be presumed to be the appropriate fraction and the person shall use that fraction unless a person rebuts that fraction with a scientifically valid study using property-specific soils or by other credible published authority.

(C) Relative bioavailability factor (RBAF). A person or the executive director may conduct a scientifically valid bioavailability study using property-specific soils or may conduct mineralogical evaluations of the chemical form of a COC present in soils at the affected property. In the event the executive director determines a more scientifically valid relative bioavailability factor, that factor shall be presumed to be the appropriate relative bioavailability factor and the person shall use that factor unless a person rebuts that factor with a scientifically valid bioavailability study using property-specific soils, mineralogical evaluation of the chemical form of a chemical of concern present in soils at the affected property, or by other credible published authority.

(2) Under Tiers 2 or 3 as provided in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), a person may request that the executive director allow a variance to the following default commercial/industrial exposure factors for the affected property as shown in the figure in subsection (a) of this section: averaging time for noncarcinogens (AT.w), exposure duration (ED.w), and exposure frequency (EF.w). This shall only be allowed for facilities that have or will have, as a condition of the approval of this variance, restricted property access. The executive director shall not delegate this decision to agency staff.

(A) The person shall submit information to the executive director which demonstrates that variance from the default exposure factors is supported by property-specific information; historical, current, and probable future land use; redevelopment potential; and compatibility with surrounding land use. The person shall also provide written concurrence from the landowner for the placement of the institutional control in the county deed records, as required in subparagraph (L) of this paragraph, unless the property is subject to zoning or governmental ordinance which is equivalent to the deed notice, Voluntary Cleanup Program [~~VCP~~] certificate of completion or restrictive covenant that otherwise would have been required.

(B) The person requesting such variance shall provide public notification as described in subparagraphs (D) and (E) of this paragraph for any request to vary the default exposure factors at the same time that variance-based protective concentration levels (PCLs) are submitted to the executive director for approval. If the natural physical condition of the on-site commercial/industrial area for which the variance is sought essentially prohibits full commercial/industrial use (e.g., marshes and cliffs), and the variance would not necessitate a lesser commercial/industrial use of that area, then the executive director will determine the need for public notice on a site-specific basis for the prohibited use area. The person may request the executive director or his staff to review the variance-based PCLs or the variance request for completeness (e.g., administratively complete, mathematical accuracy, compliance with other PCL development procedures) in advance of initiating the public notification process. The required public notice shall be completed prior to consideration of the variance request for approval by the executive director. The public notice provisions may be performed in conjunction with or as part of another public participation/notification process required for permitting or other applicable state or federal statute or regulation provided the requirements of subparagraph (E) of this paragraph are also met. Additionally, an alternative mechanism that may exist under the other public participation/notification process which effectively provides broad public notice of the variance request, such as notification to an existing citizens' advisory board for the affected property/facility, may substitute for the requirements of subparagraph (D) of this paragraph, provided the completion of the notification is sufficiently documented.

(C) The notice shall contain, at a minimum, the following information:

(i) the name, address and telephone number of the person requesting the variance;

(ii) the address and the physical description for the location of the property and the agency case designation number;

(iii) the modified value(s) the person seeks to use and the associated default exposure factor(s) as shown in the figure in subsection (a) of this section without any statements or other indications that such variance has been approved or otherwise considered favorably by the executive director or the executive director's staff other than that it has been reviewed for completeness;

(iv) a clear and concise explanation as to the effect the variance will have on the future use of the subject property and on surrounding properties;

(v) a statement that more detailed information regarding the variance request is available for review at the agency's central office in Austin, Texas, 8:00 am - 5:00 pm Monday thru Friday; and

(vi) a notice to the public of the opportunity to submit written information, within 30 calendar days after the date of the initial published notice (publish the actual date), to the executive director which demonstrates that the proposal for variance from the default exposure factors would be compatible or incompatible with existing neighboring land uses and preservation of the active and productive land use of the subject property.

(D) The notice shall be published in a newspaper distributed daily, if available, and generally circulated in the county or area where the property is located. The notice shall be published once

a week for three weeks, with at least one of the notices appearing in a Sunday edition, if available.

(E) The notice shall be sent to the following persons in clauses (i) - (viii) of this subparagraph by certified mail, return receipt requested:

(i) all adjacent landowners;

(ii) the local municipality planning board or similar governmental unit, if applicable;

(iii) local taxing authorities;

(iv) the mayor and health authorities of the city in which the property is located, if applicable;

(v) the county judge and county health authority of the county in which the property is located;

(vi) the agency's Public Interest Counsel;

(vii) all persons or organizations who have requested the notice or expressed interest; and

(viii) other persons or organizations specified by the executive director.

(F) The person shall provide copies of each notice sent by mail, copies of the published notice, and copies of the signed publisher's affidavit for the initial notice to the agency's Austin office and to the appropriate agency region office within 10 calendar days after the initial publication and mailing. Copies of the signed publisher's affidavits for the subsequent notices shall be provided to the agency's Austin office and to the appropriate agency region office within 10 days of both subsequent notices.

(G) At the executive director's request, and at the expense of the person, the person shall schedule and hold a public meeting at a time and place which are convenient for persons identified in subparagraph (E) of this paragraph. The forum chosen for the meeting shall comply with the Americans with Disabilities Act. Prior to scheduling the public meeting, the person shall coordinate the scheduling of the public meeting with the executive director's office to ensure the availability of agency personnel for the meeting. The person shall confirm with the executive director's office the date, time, and location of the meeting not less than 15 days prior to the meeting. The meeting shall be open to the public to provide information on the request to vary the default exposure factors and to allow for comments by the public. The person shall again confirm with the executive director's office on the time and place of the meeting at least 72 hours prior to the meeting.

(H) In order to inform persons of the public meeting, the person shall, at least 30 calendar days prior to the public meeting, follow the notification process required in subparagraphs (C) - (F) of this paragraph with the following exceptions:

(i) the notice shall be supplemented to include the date, time, and location of the public meeting and to indicate that the meeting is open to the public for the purposes of providing information on the request to vary default exposure factors and to provide the public the opportunity to provide comments on the request;

(ii) the notice shall indicate that the public shall have 15 calendar days after the date of the public meeting to submit written information to the executive director which demonstrates that the proposal for variance from the default exposure factors would be compatible or incompatible with existing neighboring land uses and preservation of the active and productive land use of the subject property; and

(iii) the notice by publication of the public meeting shall only be published once and shall be placed in a Sunday edition, if available.

(I) The executive director's decision on the request for a variance from the default exposure factors shall occur at least 15 calendar days after any public meeting or if no public meeting is held, at least 45 days after the date of the initial published notice. The executive director's decision shall be based upon property-specific data; historical, current, and probable future land use; redevelopment potential; and compatibility with surrounding land use. The executive director shall not consider the costs incurred for any actions taken by the person in anticipation that the variance would be approved by the executive director.

(J) At the same time that the executive director's decision is mailed to the person requesting the variance, a copy of this decision shall also be mailed to all persons identified in subparagraph (E) of this paragraph. The notice of the executive director's decision shall explain the method for submitting a motion for reconsideration of the executive director's decision by the commission.

(K) The person requesting the variance and persons identified in subparagraph (E) of this paragraph may file with the chief clerk a motion to overturn [~~for reconsideration of the executive director's decision~~] related to the request for variance, in accordance with §50.139 [~~§50.39(b) - (f)~~] of this title (relating to Motion to Overturn Executive Director's Decision) [~~for Reconsideration), as amended~~].

(L) A person who receives a variance from the default exposure factors shall comply with the institutional control requirements in §350.111(b), (b)(12), or (13) of this title (relating to Use of Institutional Controls), as applicable, and provide proof of compliance with the institutional control requirements within 90 days of the approval by the executive director of the response action completion report [~~RACR~~].

(3) The person shall not vary the following exposure factors shown in the figure in subsection (a) of this section.

(A) averaging time for residents for noncarcinogens (AT.A.res and AT.C.res) or carcinogens (ATc);

(B) body weight for adults and children (BW.A, BW.C, $BW_{(0<6)}$, $BW_{(6<18)}$, and $BW_{(18<30)}$);

(C) exposure duration for residents (ED.A.res, ED.C.res, $ED_{(0<6)}$, $ED_{(6<18)}$, and $ED_{(18<30)}$);

(D) exposure frequency for residents (EF.res);

(E) ingestion rate for soil, water, or vegetables (IRsoil.AgeAdj.res, IRsoil.C.res, IRsoil.w, IRw.AgeAdj.res, IRw.C.res, IRw.w, IRabg.AgeAdj.res, IRbg.AgeAdj.res, IRabg.C.res, IRbg.C.res);

(F) toxicity modifying factor (MF);

(G) skin surface area (SA.C.res, $SA_{(0<6)}$, $SA_{(6<18)}$, $SA_{(18<30)}$, SA.w);

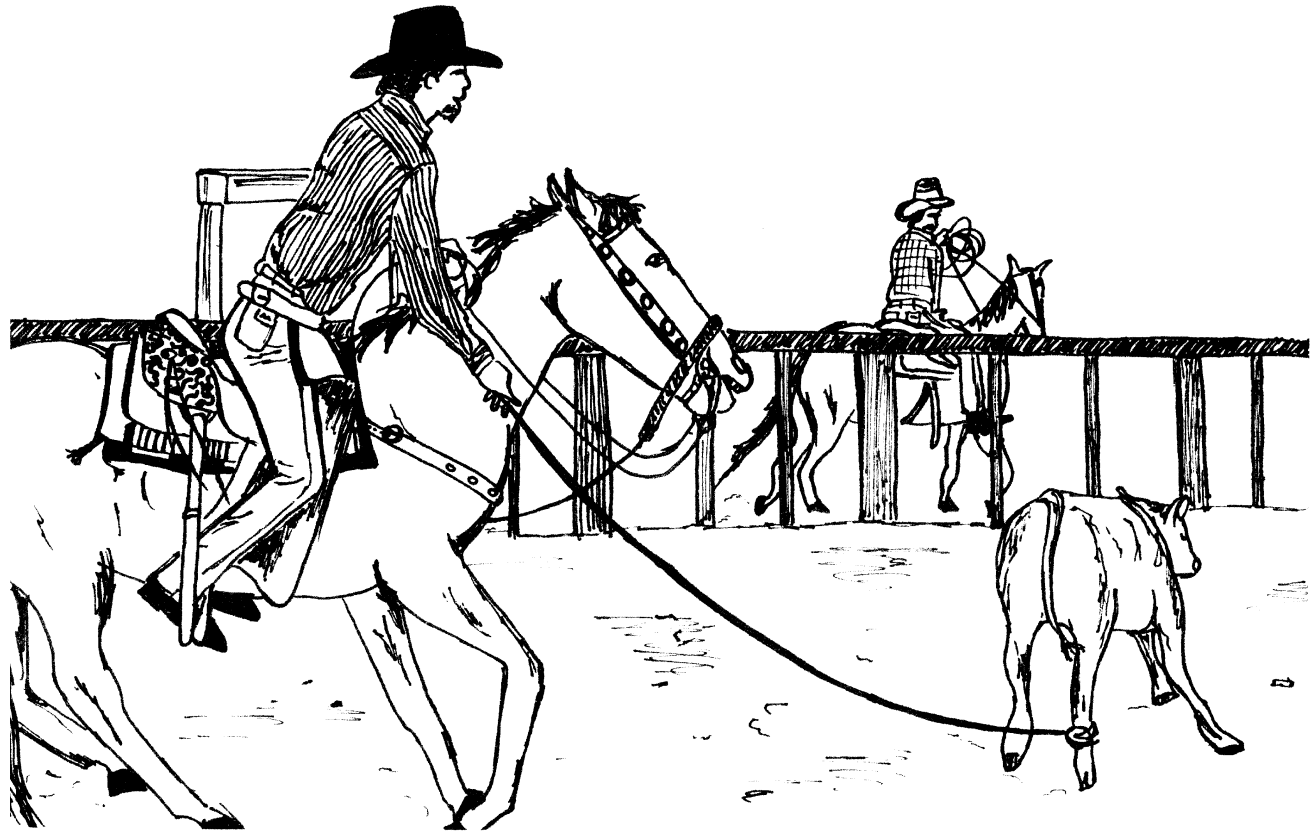
(H) soil-to-skin adherence factors (AF.C.res, $AF_{(0<6)}$, $AF_{(6<18)}$, $AF_{(18<30)}$, and AF.w).

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 October 25, 2019.

TRD-201903942
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 8, 2019
For further information, please call: (512) 239-2678

♦ ♦ ♦



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER A. LICENSING

22 TAC §203.16

The Texas Funeral Service Commission withdraws the proposed amended §203.16, which appeared in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5502).

Filed with the Office of the Secretary of State on October 23, 2019.

TRD-201904017
Kyle E. Smith
Interim Executive Director
Texas Funeral Service Commission
Effective date: October 23, 2019
For further information, please call: (512) 936-2469

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY PREPAREDNESS COMMISSION

SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §§4.32, 4.35, 4.36

The Texas Military Preparedness Commission (Commission) adopts amendments to 1 TAC §§4.32, 4.35, and 4.36, concerning the Defense Economic Adjustment Assistance Grant program under Subchapter E, Chapter 436 of the Texas Government Code. The amendments are adopted without changes to the proposed text as published in the August 2, 2019, issue of the *Texas Register* (44 TexReg 3975) and will not be republished.

REASONED JUSTIFICATION

The Defense Economic Adjustment Assistance Grant (DEAAG) program offers grants to eligible local governmental entities that the Commission determines may be adversely or positively affected by an anticipated, planned, announced, or implemented action of the United States Department of Defense to close, reduce, increase, or otherwise realign defense worker jobs or facilities. The primary purpose of the adopted amendments to the rules is to update the criteria used to award such grants based on latest practices and in response to statutory revisions to the Texas Government Code enacted by the 86th Legislature, Regular Session, in Senate Bill 1443, which became effective September 1, 2019 (SB 1443).

The Commission's rules at 1 TAC §4.32, before the proposed amendment, established a numeric threshold at which the loss of defense worker jobs was considered significant for purposes of determining the eligibility of a local government entity to receive a grant under the DEAAG program. The Commission adopts an amendment to the rule that removes this unnecessary numeric threshold and allows the Commission to determine when the loss of defense worker jobs is considered significant.

Effective as of September 1, 2019, SB 1443 removed from statute certain factors previously required to be considered in evaluating DEAAG applications and instead now allows the Commission to establish any additional criteria used in such evaluations. The adopted amendments to §4.36 generally remove such factors from the evaluation of DEAAG applications, as well as remove other criteria, such as the extent to which displaced defense workers will be retrained, that are difficult to measure and assess or are otherwise outdated or duplicative. In place of such criteria, the adopted amendments enable the Commission to determine additional criteria set out in the grant solicitation.

Finally, the Commission adopts amendments to §4.35 eliminating the requirement that applicants provide certain information in their DEAAG applications, as that information is no longer needed as a result of the updated evaluation criteria or is otherwise no longer helpful.

SUMMARY OF COMMENTS AND COMMISSION RESPONSES

The public comment period on the proposal began August 2, 2019 and ended September 2, 2019. Following is a summary of the one public comment and one question received and the Commission's response to each.

Comment. One individual commented that §4.32(b) ties grant eligibility for positively-affected local governmental entities to a positive impact resulting from the Base Realignment and Closure process, while §4.32(a) ties grant eligibility for negatively-affected local governmental entities to a negative impact resulting from broader circumstances. The individual did not indicate whether he or she was for or against the adoption of the amendments to the rules.

Commission Response. The Commission declines to propose changes to §4.32(b) at this time, but may consider amending subsection (b) at a later date with stakeholder input.

Comment. The same individual requested clarification regarding the meaning of "military value" as used in the Commission's rules in relation to the meaning of such phrase as used in Chapter 436, Government Code.

Commission Response. The Commission does not intend to set out a definition for the phrase "military value" in the rules at this time.

STATUTORY AUTHORITY

The amendments are adopted under Government Code, §436.101(f), which provides that the Commission can adopt rules necessary to implement its duties.

CROSS REFERENCE TO STATUTE

Subchapter E, Chapter 436, Government Code, as amended by Senate Bill 1443, 86th Legislature, Regular Session.

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 October 28, 2019.

TRD-201903999
Keith Graf
Director, Texas Military Preparedness Commission
Office of the Governor
Effective date: November 17, 2019
Proposal publication date: August 2, 2019
For further information, please call: (512) 475-1475

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PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 64. STANDARDS OF OPERATION FOR LOCAL COURT-APPOINTED VOLUNTEER ADVOCATE PROGRAMS

1 TAC §§64.1, 64.3, 64.5, 64.7, 64.9, 64.11, 64.13

The Office of the Attorney General (OAG) adopts the repeal of Chapter 64, concerning standards of operation for local court-appointed volunteer advocate programs. The proposed repeal was published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4596).

Effective September 1, 2015, Family Code §264.609 transferred rulemaking authority to adopt standards for local court-appointed volunteer advocate programs to the Texas Health and Human Services Commission (HHSC). HHSC adopted new standards into rule at 1 TAC Chapter 377, Subchapter B, effective July 11, 2017. Therefore, the OAG proposed the repeal of Chapter 64, which has been replaced by HHSC's rules.

No comments were received regarding the proposed repeal.

This repeal is adopted in accordance with Family Code §264.609, which transferred rulemaking authority to adopt standards for local court-appointed volunteer advocate programs to HHSC.

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 October 28, 2019.

TRD-201904000
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Effective date: November 17, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 475-3210

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CHAPTER 65. STANDARDS OF OPERATION FOR LOCAL CHILDREN'S ADVOCACY CENTERS

SUBCHAPTER A. GENERAL

1 TAC §§65.1, 65.3, 65.5, 65.7, 65.9, 65.11

The Office of the Attorney General (OAG) adopts the repeal of Chapter 65, concerning standards of operation of local children's advocacy centers. The proposed repeal was published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4597).

Effective September 1, 2015, Family Code §264.410(c) transferred rulemaking authority to adopt standards for local children's advocacy centers to the Texas Health and Human Services Commission (HHSC). HHSC adopted new standards into rule at 1 TAC Chapter 377, Subchapter C, effective July 11, 2017. Therefore, the OAG proposed the repeal of Chapter 65, which has been replaced by HHSC's rules.

No comments were received regarding the proposed repeal.

This repeal is adopted in accordance with Family Code §264.410(c), which transferred rulemaking authority to adopt standards for local children's advocacy centers to HHSC.

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 October 28, 2019.

TRD-201904001
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Effective date: November 17, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 475-3210

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1707, concerning Performer Valuations, in Texas Administrative Code (TAC) Title 1, Chapter 354, Subchapter D, Division 7 and adopts new Division 8, concerning DSRIP Program Demonstration Years 9-10, consisting of new §354.1729, concerning Definitions; new §354.1731, concerning Medicaid and Low-income or Uninsured Patient Population by Provider; new §354.1733, concerning Regional Healthcare Partnerships (RHPs); new §354.1735, concerning Participants; new §354.1737, concerning RHP Plan Update for DY9-10; new §354.1739, concerning RHP Plan Update Review; new §354.1741, concerning RHP Plan Update Modifications; new §354.1743, concerning Independent Assessor; new §354.1745, concerning Categories; new §354.1747, concerning Performer Valuations; new §354.1749, concerning Category A Requirements for Performers; new §354.1751, concerning Category B Requirements for Performers; new §354.1753, concerning Category C Requirements for Performers; new

§354.1755, concerning Category D Requirements for Performers; and new §354.1757, concerning Disbursement of Funds.

New §354.1731 and §354.1747 are adopted with changes to the proposed text as published in the August 2, 2019, issue of the *Texas Register* (44 TexReg 3977) and are being republished. The remaining sections are adopted without changes to the proposed text as published in the August 2, 2019, issue of the *Texas Register* (44 TexReg 3977), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

On December 12, 2011, the Centers for Medicare & Medicaid Services (CMS) approved Texas' request for a new Medicaid demonstration waiver entitled "Texas Healthcare Transformation and Quality Improvement Program" in accordance with section 1115 of the Social Security Act. This waiver authorized the establishment of the Delivery System Reform Incentive Payment (DSRIP) program. The DSRIP program provides incentive payments to hospitals, physician practices, community mental health centers, and local health departments to support their efforts to enhance access to health care, the quality of care, and the health of patients and families served.

The initial waiver was approved through September 30, 2016, and an initial extension was granted through December 31, 2017. On December 21, 2017, CMS granted a five-year extension of the waiver through September 30, 2022.

The Program Funding and Mechanics (PFM) protocol and Measure Bundle Protocol govern DSRIP for Demonstration Years (DYs) 9-10 (October 1, 2019 - September 30, 2021). HHSC posted the draft PFM protocol proposal for DYs 9-10, along with a survey to solicit stakeholder feedback on the proposal, to the Transformation Waiver website on January 3, 2019. HHSC revised the PFM protocol proposal based on these survey responses and submitted it to CMS on March 29, 2019. The adopted rules closely align with the PFM protocol proposal submitted to CMS. HHSC will update these rules, as necessary, in accordance with CMS guidance.

The purpose of the new rules is to specify the DSRIP program requirements for DYs 9-10 consistent with the PFM protocol HHSC proposed to CMS. The purpose of the amendment to §354.1707, relating to Performer Valuations, is to reflect the reduction to the Regional Healthcare Partnership (RHP) 9 private hospital valuation and minimum private hospital valuation per DY for DYs 7-8 due to the closure of a private hospital in that RHP.

COMMENTS

The 31-day comment period ended September 2, 2019. During this period, HHSC received comments regarding the proposed rules from three entities: Gjerset & Lorenz, LLP, The Hospitals of Providence Memorial, and The Hospitals of Providence East Campus. A summary of the comments and HHSC's responses follow.

Comment: One commenter requested clarification on whether DSRIP performing providers would be allowed to carry forward achievement of their DY 10 goal achievement milestones for Category C pay-for-performance (P4P) measures to performance year (PY) 5 (January 1, 2022 - December 31, 2022).

Response: The proposed rules are based on the PFM protocol proposal for DY 9-10 that HHSC submitted to CMS on March 29, 2019. In July 2019, CMS indicated that DSRIP performing providers would not be allowed to carry forward achievement of their DY 10 goal achievement milestones for Category C P4P measures to PY 5. Therefore, HHSC will need to amend the rules after adoption to reflect this.

Comment: Two commenters expressed support for proposed §354.1753(e)(1) and (e)(2), which specify that for DYs 9 and 10, 33 percent of the funds for Category C P4P measures will be allocated to reporting milestones and 67 percent will be allocated to goal achievement milestones.

Response: HHSC appreciates comments in support of the proposal. No changes were made to the rule in response to the comments. However, the proposed rules are based on the PFM protocol proposal for DY 9-10 that HHSC submitted to CMS on March 29, 2019. In July 2019, CMS indicated that only 25 percent of the funds for Category C P4P measures could be allocated to reporting milestones and that 75 percent must be allocated to goal achievement milestones. Therefore, HHSC will need to amend the rules after adoption to reflect this.

Comment: Two commenters expressed support for proposed §354.1753(h) and §354.1757(c)(2)(A)(i), which allow DSRIP performing providers to carry forward achievement of their DY 10 goal achievement milestones for Category C P4P measures to PY 5.

Response: HHSC appreciates comments in support of the proposal. No changes were made to the rule in response to the comments. However, the proposed rules are based on the PFM protocol proposal for DY 9-10 that HHSC submitted to CMS on March 29, 2019. In July 2019, CMS indicated that DSRIP performing providers would not be allowed to carry forward achievement of their DY 10 goal achievement milestones for Category C P4P measures to PY 5. Therefore, HHSC will need to amend the rules after adoption to reflect this.

Minor editorial changes were made to §354.1731 and §354.1747 to reflect proper rule formatting.

DIVISION 7. DSRIP PROGRAM DEMONSTRATION YEARS 7-8

1 TAC §354.1707

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid payments.

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 October 23, 2019.

TRD-201903862

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 12, 2019
Proposal publication date: August 2, 2019
For further information, please call: (512) 923-0644

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DIVISION 8. DSRIP PROGRAM DEMONSTRATION YEARS 9-10

1 TAC §§354.1729, 354.1731, 354.1733, 354.1735, 354.1737, 354.1739, 354.1741, 354.1743, 354.1745, 354.1747, 354.1749, 354.1751, 354.1753, 354.1755, 354.1757

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid payments.

§354.1731. Medicaid and Low-income or Uninsured Patient Population by Provider.

For the purposes of determining the Medicaid and Low-income or Uninsured Patient Population by Provider (PPP):

(1) An individual is classified a Medicaid individual served if the individual was enrolled in Medicaid or the Children's Health Insurance Program at the time of at least one encounter during the applicable DY.

(2) An individual is classified a low-income or uninsured individual (LIU) served if the individual was either at or below 200 percent of the FPL or did not have health insurance at the time of at least one encounter during the applicable DY.

(3) If an individual was enrolled in Medicaid or the Children's Health Insurance Program at the time of one encounter during the applicable DY and was LIU at the time of a separate encounter during the applicable DY, that individual is classified as a Medicaid individual served.

§354.1747. Performer Valuations.

(a) A performer's total valuation per demonstration year (DY) for DY9 and DY10 is calculated as follows:

(1) If a performer has a DY8 total valuation that is less than or equal to $1 million, its total valuation for each demonstration year of DY9 and DY10 is equal to its total valuation for DY8. These valuations are subtracted from the DY9 and DY10 DSRIP pool amounts.

(2) If a performer has a DY8 total valuation that is greater than $1 million, its total valuation for each demonstration year of DY9 and DY10 is calculated as follows:

(A) The remaining DY9 and DY10 DSRIP pool amounts are divided by the DY8 valuation for all performers with a DY8 total valuation greater than $1 million to determine the percentage reductions for DY9 and DY10;

(B) The performer's DY8 valuation is multiplied by the percentage reduction in valuation from DY8 for the applicable DY to determine the total valuation for each demonstration year of DY9 and DY10; and

(C) The performer's total valuation for each demonstration year of DY9 and DY10 is not reduced to less than $1 million.

(3) If a performer withdrew from participating in DSRIP during DY8 or withdraws during the RHP Plan Update for DY9-10, the performer's valuation is proportionately distributed among the remaining performers in its RHP based on each performer's percent share of DY8 valuation in the RHP.

(b) A performer's valuation must comport with the following funding distribution for DY9 and DY10:
Figure: 1 TAC §354.1747(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 October 23, 2019.

TRD-201903863
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 12, 2019
Proposal publication date: August 2, 2019
For further information, please call: (512) 923-0644

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8216, §355.8218

The Texas Health and Human Services Commission (HHSC) adopts new §355.8216, concerning Delivery System Reform Incentive Payments for Demonstration Years 9-10; and new §355.8218, concerning Funding for DSRIP Monitoring Program for Demonstration Years 9-10. These new sections are adopted without changes to the proposed text as published in the August 2, 2019, issue of the *Texas Register* (44 TexReg 3994), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

On December 12, 2011, the Centers for Medicare & Medicaid Services (CMS) approved Texas' request for a new Medicaid demonstration waiver entitled "Texas Healthcare Transformation and Quality Improvement Program" in accordance with section 1115 of the Social Security Act. This waiver authorized the establishment of the Delivery System Reform Incentive Payment (DSRIP) program. The DSRIP program provides incentive payments to hospitals, physician practices, community mental health centers, and local health departments to support their efforts to enhance access to health care, the quality of care, and the health of patients and families served.

The initial waiver was approved through September 30, 2016, and an initial extension was granted through December 31, 2017. On December 21, 2017, CMS granted a five-year extension of the waiver through September 30, 2022.

The Program Funding and Mechanics (PFM) protocol and Measure Bundle Protocol govern DSRIP for Demonstration Years (DYs) 9-10 (October 1, 2019 - September 30, 2021). HHSC posted the draft PFM protocol proposal for DYs 9-10, along with a survey to solicit stakeholder feedback on the proposal, to the Transformation Waiver website on January 3, 2019. HHSC revised the PFM protocol proposal based on these survey responses and submitted it to CMS on March 29, 2019. The adopted rules closely align with the PFM protocol proposal submitted to CMS. HHSC will update these rules, as necessary, in accordance with CMS guidance.

The purpose of the new rules is to specify the DSRIP program requirements for DYs 9-10 consistent with the PFM protocol HHSC proposed to CMS. New §355.8216 describes performer eligibility for payments, the payment methodology, and recoupment. New §355.8218 describes how the DSRIP monitoring program is funded.

COMMENTS

The 31-day comment period ended September 2, 2019. During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid payments.

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 October 23, 2019.

TRD-201903864
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 12, 2019
Proposal publication date: August 2, 2019
For further information, please call: (512) 923-0644

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 103. RULEMAKING PROCEDURE

7 TAC §103.6

The Texas State Securities Board adopts new rule §103.6, concerning Negotiated Rulemaking, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4789). The rule will not be republished.

New §103.6 implements §2-8 of the Texas Securities Act, which was added by House Bill 1535, passed during the 86th legislative session. The rule complies with an amendment to the Texas Securities Act regarding establishing a policy on the use of negotiated rulemaking and with Texas Government Code, Chapter 2008.

The public will have a clear, open, inclusive, and consistent process for the use of negotiated rulemaking in appropriate situations.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Articles 581-2-5, 581-2-8 (effective September 1, 2019), 581-3.D (effective September 1, 2019), 581-4.N, 581-4.P, 581-5.T, 581-7.A, 581-8, 581-12.C, 581-12-1.B, 581-13.D, 581-19.B, 581-28.A, 581-28.B, 581-28-1.B, 581-28-1.D, 581-42.A, 581-42.B, 581-44, 581-45.N, and Texas Government Code, Chapter 2008.

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 October 23, 2019.

TRD-201903865
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 12, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 305-8303

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CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §104.7

The Texas State Securities Board adopts an amendment to §104.7, concerning Preliminary Evaluation of License Eligibility, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4790). The rule will not be republished.

The amendment implements the requirements of House Bill 1342, passed during the 2019 Regular Session of the Texas Legislature, that amended Chapter 53 of the Texas Occupations Code. Specifically, the amendment alters the factors to be considered in determining whether a conviction relates to a registration or license issued by this Agency to a securities professional, adds new factors that must be considered in

determining eligibility, removes other factors from consideration, and expands notice requirements.

The rule will enhance opportunities for a person to obtain gainful employment in the securities industry after the person has been convicted of an offense and discharged the sentence for the offense.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and Texas Occupations Code, Chapter 53, Subchapter D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Texas Occupations Code, Chapter 53, Subchapter D provides a means for a potential applicant to obtain preliminary information regarding their eligibility for an occupational license before they begin a training program for the occupation.

The adopted amendment affects Texas Occupations Code, Chapter 53, Subchapter D, and Texas Civil Statutes, Article 581-14.

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 October 23, 2019.

TRD-201903866
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 12, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 305-8303

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CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.13

The Texas State Securities Board adopts an amendment to §109.13, concerning limited offering exemptions, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4791). The amended rule will not be republished.

The amendment implements recommendations made by the Texas Sunset Advisory Commission to eliminate notarization requirements for forms when the Texas Securities Act does not otherwise require the form to be sworn. Specifically, the amendment removes the requirement that Form 133.29 be sworn to correspond to the repeal of Form 133.29 and adoption of new Form 133.29. The new Form 133.29 would not require the form to be sworn.

Filing of Form 133.29 will be more efficient with the removal of the unnecessary notarization requirement and that removal will be reflected in the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5 and 581-7.

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 October 23, 2019.

TRD-201903869
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 12, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 305-8303

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CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §§113.1, 113.4, 113.11

The Texas State Securities Board adopts amendments to §113.1, concerning qualification of securities; §113.4, concerning application for registration; and §113.11, concerning shelf registration of securities, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4792). The amended rules will not be republished.

The amendments delete references to an obsolete Securities and Exchange Commission (SEC) regulation and form and eliminates a reference and cross-reference to the Securities Registration Depository ("SRD") System.

The rules accurately coordinate with federal standards and requirements since outdated references have been eliminated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Civil Statutes, Article 581-7.

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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Travis J. Iles
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For further information, please call: (512) 305-8303

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CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.3, §114.4

The Texas State Securities Board adopts amendments to §114.3, concerning consents to service of process, and to §114.4, concerning filings and fees, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4793). The amended rules will not be republished.

The amendments remove an outdated reference and implement recommendations made by the Texas Sunset Advisory Commission to remove notarization and sworn under oath requirements where the Texas Securities Act does not require these forms to be sworn. Additionally, the amendments allow filings and fees by unit investment trusts ("UITs") to be made electronically through the EFD System and permits a filer to use the Uniform Notice Filing of Regulation A - Tier 2 Offering form.

Outdated references and unnecessary administrative burdens were removed, more efficiency provided by allowing electronic filings for UITs, and filing guidance provided for Regulation A+ filers.

No comments were received regarding adoption of the amendments.

The amendments adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Civil Statutes, Articles 581-5 and 581-7.

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 115. SECURITIES DEALERS AND AGENTS

7 TAC §§115.1, 115.2, 115.4

The Texas State Securities Board adopts amendments to §115.1, concerning general provisions, to §115.2, concerning application requirements, and to §115.4, concerning evidences of registration, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4794). The amended rules will not be republished.

The amendments implement Sunset Advisory Commission recommendations and comply with House Bill 1535, enacted by the 86th Texas Legislature, which amended the Texas Securities Act to remove the requirement that branch offices of dealers be registered and pay a branch office registration fee. Instead, branch offices of dealers are required to make a notice filing, which does not require any filing fee.

The rule aligns the branch office requirements to statutory changes by removing unnecessary administrative burdens, including eliminating a notarization requirement and a fee and by converting a registration to a notice filing.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Civil Statutes, Articles 581-12, 581-13, 581-18, and 581-35 (effective September 1, 2019).

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For further information, please call: (512) 305-8303

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7 TAC §115.6

The Texas State Securities Board adopts an amendment to §115.6, concerning Registration of Persons with Criminal Backgrounds, with non-substantive changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4796). The amended rule will be republished.

The amendment implements the requirements of House Bill 1342 passed during the 2019 Regular Session of the Texas Legislature, which required licensing authorities to issue guidelines relating to the licensing of persons with criminal convictions. The amendment alters the factors considered in determining whether a conviction relates to a registered or licensed occupation, adds new factors that must be considered in determining eligibility, removes other factors from consideration, and adds new notification requirements.

The rule enhances opportunities for a person to obtain gainful employment in the securities industry after the person has been convicted of a criminal offense and discharged the sentence.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-14, and Texas Occupations Code, §53.025.

§115.6. Registration of Persons with Criminal Backgrounds.

(a) An application for registration may be denied, or a registration may be revoked or suspended, if the Securities Commissioner finds that the person has been convicted of any felony, or of a misdemeanor offense that directly relates to its duties and responsibilities. In determining whether a misdemeanor directly relates to such duties and responsibilities, the Securities Commissioner shall consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring registration of dealers and agents;

(3) the extent to which the registration applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved;

(4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a registered dealer or agent; and

(5) any correlation between the elements of the crime and its duties and responsibilities.

(b) After the Securities Commissioner has determined the criminal conviction directly relates to the duties and responsibilities of the license, the Securities Commissioner shall consider the following evidence in determining whether the person is eligible for a license issued by the Agency:

(1) The extent and nature of the person's past criminal activity.

(2) The age of the applicant at the time of the commission of the crime.

(3) The amount of time that has elapsed since the applicant's last criminal activity.

(4) The conduct and work activity of the applicant prior to and following the criminal activity.

(5) Evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release.

(6) Evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.

(7) Other evidence of the applicant's present fitness, including letters of recommendation, may be provided and considered, including letters from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(8) It shall be the responsibility of the applicant to the extent possible to secure and provide to the Securities Commissioner the letters of recommendation described by paragraph (7) of this subsection.

(c) The State Securities Board considers that the following misdemeanors directly relate to the duties and responsibilities of securities dealers and agents:

(1) any criminal violation of which fraud is an essential element or that involves wrongful taking or possession of property or services;

(2) any criminal violation of the securities laws or regulations of this state, or of any other state in the United States, or of the United States, or any foreign jurisdiction;

(3) any criminal violation of statutes designed to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services; and

(4) any criminal violation involving an assault on a person.

(d) Prior to filing an application, a person may request a preliminary evaluation of license eligibility from the State Securities Board by following the procedure set out in §104.7 of this title (relating to Preliminary Evaluation of License Eligibility) and paying the requisite fee.

(e) Prior to taking any action under subsection (a) of this section to deny any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.0231 Notice of Pending Denial of License, and §53.051.

(f) Prior to taking any action under subsection (a) of this section to revoke or suspend any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.051.

(g) State Auditor Applicant Best Practices Guide.

(1) The State Securities Board shall post a link on its website to the Applicant Best Practices Guide, to be developed and published by the state auditor as required by Texas Occupations Code, §53.026. This guide, which shall be posted once it becomes available, shall set forth best practices for an applicant with a prior conviction to use when applying for a license.

(2) In each notice to deny, revoke, or suspend a registration or to deny a person the opportunity be examined for a registration, the State Securities Board shall include a link to the guide as described in paragraph (1) of this subsection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Travis J. Iles
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7 TAC §115.18

The Texas State Securities Board adopts an amendment to §115.18, concerning Special Provisions Relating to Military Applicants, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4797). The amended rule will not be republished.

The amendment implements the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session, which authorizes a military spouse to engage in a business or occupation for which a license or registration is required for the initial three-year period without obtaining the applicable license or registration. To be eligible the military spouse must hold a current license or registration, that is in good standing, issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for the license or registration in Texas. The amendment sets out the procedure an eligible military spouse would follow to obtain this treatment in connection with activities as a securities professional.

Regulatory and financial burdens are eased for certain military spouses, licensed and in good standing as securities professionals in another state, who are relocating to Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

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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7 TAC §115.22

The Texas State Securities Board adopts new rule §115.22, concerning electronic submission of forms and fees, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4799). The new rule will not be republished.

The new rule implements a management recommendation of the Sunset Advisory Commission to allow dealer and agent applicants the option to electronically submit certain registration documents (not presently filed through the CRD system) with the Agency.

Burdens on filers are reduced by providing online submission of application forms and supplemental documents currently being submitted on paper.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

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 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §§116.1, 116.2, 116.4

The Texas State Securities Board adopts amendments to §116.1, concerning general provisions, to §116.2, concerning application requirements, and to §116.4, concerning evidences of registration. Section 116.1 was adopted with changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4801). Sections 116.2 and 116.4 were adopted without changes and will not be republished.

Subsection (b) in §116.1 has been changed to remove a comma after "investment advisers."

The amendments implement Sunset Advisory Commission recommendations and comply with House Bill 1535, enacted by the 86th Texas Legislature, which amended the Texas Securities Act to remove the requirement that branch offices of investment advisers be registered and pay a branch office registration fee. Instead, branch offices of investment advisers are required to make a notice filing, which does not require any filing fee.

The rule aligns the branch office requirements to statutory changes by removing unnecessary administrative burdens, including eliminating a notarization requirement and a fee and by converting a registration to a notice filing.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Civil Statutes, Articles 581-12, 581-13, 581-18, and 581-35.

§116.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Applicant--A person who submits an application for registration as an investment adviser or an investment adviser representative.

(2) Branch office--Any location where one or more representatives of an investment adviser regularly conduct investment advisory services or that is held out as such.

(A) This definition excludes:

(i) any location that is established solely for customer service and/or back office type functions where no advisory services are conducted and that is not held out to the public as a branch office;

(ii) any location that is the investment adviser representative's primary residence, provided that:

(I) only one investment adviser representative, or multiple representatives who reside at that location and are members of the same immediate family, conduct business at the location;

(II) the location is not held out to the public as an office and the investment adviser representative does not meet with customers at the location;

(III) neither customer funds nor securities are handled at that location;

(IV) the investment adviser representative is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such representative;

(V) the investment adviser representative's correspondence and communications with the public are subject to the investment adviser's supervision;

(VI) electronic communications (e.g., e-mail) are made through the investment adviser's electronic system;

(VII) all orders are entered through the designated branch office or an electronic system established by the investment adviser that is reviewable at the branch office;

(VIII) written supervisory procedures pertaining to supervision of investment advisory services conducted at the residence are maintained by the investment adviser; and

(IX) a list of the residence locations are maintained by the investment adviser;

(iii) any location, other than a primary residence, that is used for investment advisory services for less than 30 business days in any one calendar year, provided the investment adviser complies with the provisions of clause (ii)(II) - (VIII) of this subparagraph;

(iv) any office of convenience, where investment adviser representatives occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(v) any location that is used primarily to engage in non-securities activities and from which the investment adviser representative(s) effects no more than 25 investment advisory services in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the representative(s) conducting business at the non-branch locations are directly supervised; and

(vi) a temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in subparagraph (A) of this paragraph, any location that is responsible for supervising the activities of persons associated with the investment adviser at one or more non-branch locations of the investment adviser is considered to be a branch office.

(C) The term "business day" shall not include any partial business day provided that the investment adviser representative spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(3) Supervisor--The person named by the investment adviser to supervise the activities of a branch office and registered as an investment adviser representative.

(4) Control--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or company, whether through the ownership of voting securities, by contract, or otherwise.

(5) In this state--

(A) A person renders services as an investment adviser "in this state" as set out in the Texas Securities Act, §12.B, if either the person or the person's agent is present in this state or the client/customer

or the client/customer's agent is present in this state at the time of the particular activity. A person can be an investment adviser in more than one state at the same time.

(B) Likewise, a person renders services as an investment adviser representative "in this state" as set out in the Texas Securities Act, §12.B, whether by direct act or through subagents except as otherwise provided, if either the person or the person's agent is present in this state or the client/customer or the client/customer's agent is present in this state at the time of the particular activity. A person can be an investment adviser representative in more than one state at the same time.

(C) Rendering services as an investment adviser or as an investment adviser representative can be made by personal contact, mail, telegram, telephone, wireless, electronic communication, or any other form of oral or written communication.

(6) Investment adviser--A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities or a person who, for compensation and as part of a regular business, issues or adopts analyses or a report concerning securities. The term does not include:

(A) a bank or a bank holding company, as defined by the Bank Holding Company Act of 1956 (12 U.S.C. §1841 et seq.), as amended, that is not an investment company;

(B) a lawyer, accountant, engineer, teacher, or geologist whose performance of the services is solely incidental to the practice of the person's profession;

(C) a dealer or agent who receives no special compensation for those services and whose performance of those services is solely incidental to transacting business as a dealer or agent;

(D) the publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

(E) a person whose advice, analyses, or report does not concern a security other than a security that is:

(i) a direct obligation of or an obligation the principal or interest of which is guaranteed by the United States government, or

(ii) issued or guaranteed by a corporation in which the United States has a direct or indirect interest and designated by the United States Secretary of the Treasury under Securities Exchange Act of 1934, §3(a)(12), (15 U.S.C. §78c(a)(12)), as amended, as an exempt security for purposes of that Act.

(7) Investment adviser representative or representative of an investment adviser--Each person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who, on behalf of an investment adviser, provides investment advice, directly or through subagents, to the investment adviser's clients. The term does not include a partner of a partnership or an officer of a corporation or other entity that is registered as an investment adviser under the Texas Securities Act solely because of the person's status as an officer or partner of that entity.

(8) Rendering services as an investment adviser--Any act by which investment advisory services are provided for compensation.

(9) Solicitor--Any investment adviser or investment adviser representative who limits their activities to referring potential clients to an investment adviser for compensation.

(10) Federal covered investment adviser--An investment adviser who is registered under the Investment Advisers Act of 1940 (15 U.S.C. §80b-1 et seq.), as amended. A federal covered investment adviser is not required to be registered pursuant to the Texas Securities Act.

(11) Registered investment adviser--An investment adviser who has been issued a registration certificate by the Securities Commissioner under the Texas Securities Act, §15. (A federal covered investment adviser is not prohibited from being registered with the Securities Commissioner. If a federal covered investment adviser elects to register with the Securities Commissioner, it is subject to all of the registration requirements of the Act.)

(12) Officer--A president, vice president, secretary, treasurer, or principal financial officer, comptroller, or principal accounting officer, or any other person occupying a similar status or performing similar functions with respect to any organization or entity, whether incorporated or unincorporated.

(b) Registration of investment advisers and investment adviser representatives, and notice filings for branch offices.

(1) Requirements of registration or notice filing.

(A) Any person who renders services as an investment adviser, including acting as a solicitor, may not engage in such activity for compensation without first being registered as an investment adviser under the provisions of the Texas Securities Act or notice-filed under the provisions of paragraph (2) of this subsection. Likewise, every person employed or appointed, or authorized by such person to render services, which include the giving of investment advice or acting as a solicitor, cannot conduct such activities unless registered as an investment adviser or an investment adviser representative under the provisions of the Act, or notice-filed as an investment adviser or an investment adviser representative under the provisions of paragraph (2) of this subsection.

(B) Each branch office of a registered investment adviser in Texas must make a notice filing to become designated as a branch office of the investment adviser. A registered officer, partner, or investment adviser representative must be named as supervisor.

(2) Exemption from the registration requirements. The Board pursuant to the Texas Securities Act, §§12.C and 5.T, exempts from the registration provisions of the Act, §12, persons not required to register as an investment adviser or an investment adviser representative on or after July 8, 1997, by act of Congress in Public Law Number 104-290, Title III.

(A) Registration as an investment adviser is not required for the following:

(i) an investment adviser registered under the Investment Advisers Act of 1940, §203;

(ii) an investment adviser registered with the Securities and Exchange Commission pursuant to a rule or order adopted under the Investment Advisers Act of 1940, §203A(c);

(iii) a person not registered under the Investment Advisers Act of 1940, §203, because such person is excepted from the definition of an investment adviser under the Investment Advisers Act of 1940, §202(a)(11); or

(iv) an investment adviser who does not have a place of business located in this state and, during the preceding 12-month period, has had fewer than six clients who are Texas residents.

(B) Registration as an investment adviser representative of an investment adviser described in subparagraph (A) of this paragraph is not required for an investment adviser representative who does not have a place of business located in Texas but who otherwise engages in the rendering of investment advice in this state.

(C) Notice filing requirements and fees for investment advisers and investment adviser representatives exempted from registration pursuant to this subsection only.

(i) Initially, the provisions of subparagraphs (A) and (B) of this paragraph are available provided that the investment adviser files:

(I) Form ADV through the IARD designating Texas as a jurisdiction in which the filing is to be made; and

(II) an initial fee equal to the amount that would have been paid had the investment adviser and each investment adviser representative filed for registration in Texas.

(ii) Annually, the investment adviser files renewal fees which would have been paid had the investment adviser and each investment adviser representative been registered in Texas.

(D) Persons not required to register with the Securities Commissioner pursuant to subparagraphs (A) and (B) of this paragraph, are reminded that the Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by an investment adviser or investment adviser representative in connection with transactions involving securities in Texas.

(c) Types of registrations.

(1) General registration. A general registration is a registration to render advisory services regarding all categories of securities, without limitation.

(2) Restricted registration. A restricted registration as an investment adviser or as an investment adviser representative may be issued based upon the qualifying examination(s) passed by the investment adviser or investment adviser representative.

(3) In restricted registration, the evidence of registration shall indicate that the holder thereof is entitled to act as an investment adviser, investment adviser representative, or solicitor only in the restricted capacity.

(d) Prohibition on fraud and availability of an exemption from registration. The Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by an investment adviser or investment adviser representative in connection with transactions involving securities in Texas. However, the registration requirements detailed in this chapter do not apply to investment advisers and investment adviser representatives that are exempt from registration as such pursuant to the Texas Securities Act, §5, or by Board rule pursuant to the Texas Securities Act, §5.T or §12.C, contained in Chapters 109 or 139 of this title.

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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7 TAC §116.6

The Texas State Securities Board adopts an amendment to §116.6, concerning Registration of Persons with Criminal Backgrounds, with non-substantive changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4802). The amended rule will be republished.

The amendment implements the requirements of House Bill 1342 passed during the 2019 Regular Session of the Texas Legislature, which required licensing authorities to issue guidelines relating to the licensing of persons with criminal convictions. The amendment alters the factors considered in determining whether a conviction relates to a registered or licensed occupation, adds new factors that must be considered in determining eligibility, removes other factors from consideration, and adds new notification requirements.

The rule enhances opportunities for a person to obtain gainful employment in the securities industry after the person has been convicted of a criminal offense and discharged the sentence.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-14, and Texas Occupations Code, §53.025.

§116.6. Registration of Persons with Criminal Backgrounds.

(a) An application for registration may be denied, or a registration may be revoked or suspended, if the Securities Commissioner finds that the person has been convicted of any felony, or of a misdemeanor offense that directly relates to its duties and responsibilities. In determining whether a misdemeanor conviction directly relates to such duties and responsibilities, the Securities Commissioner shall consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring registration of investment advisers and investment adviser representatives;

(3) the extent to which the registration applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved;

(4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a registered investment adviser or investment adviser representative; and

(5) any correlation between the elements of the crime and its duties and responsibilities.

(b) After the Securities Commissioner has determined the criminal conviction directly relates to the duties and responsibilities of the license, the Securities Commissioner shall consider the following evidence in determining whether the person is eligible for a license issued by the Agency:

(1) The extent and nature of the person's past criminal activity.

(2) The age of the applicant at the time of the commission of the crime.

(3) The amount of time that has elapsed since the applicant's last criminal activity.

(4) The conduct and work activity of the applicant prior to and following the criminal activity.

(5) Evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release.

(6) Evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.

(7) Other evidence of the applicant's present fitness, including letters of recommendation, may be provided and considered, including letters from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(8) It shall be the responsibility of the applicant to the extent possible to secure and provide to the Securities Commissioner the letters of recommendation described by paragraph (7) of this subsection.

(c) The State Securities Board considers that the following crimes directly relate to the duties and responsibilities of investment advisers and investment adviser representatives:

(1) any criminal violation of which fraud is an essential element or that involves wrongful taking or possession of property or services;

(2) any criminal violation of the securities laws or regulations of this state, or of any other state in the United States, or of the United States, or any foreign jurisdiction;

(3) any criminal violation of statutes designed to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services; and

(4) any criminal violation involving an assault on a person.

(d) Prior to filing an application, a person may request a preliminary evaluation of license eligibility from the State Securities Board by following the procedure set out in §104.7 of this title (relating to Preliminary Evaluation of License Eligibility) and paying the requisite fee.

(e) Prior to taking any action under subsection (a) of this section to deny any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.0231 Notice of Pending Denial of License, and §53.051.

(f) Prior to taking any action under subsection (a) of this section to revoke or suspend any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.051.

(g) State Auditor Applicant Best Practices Guide.

(1) The State Securities Board shall post a link on its website to the Applicant Best Practices Guide, to be developed and published by the state auditor as required by Texas Occupations Code, §53.026. This guide, which shall be posted once it becomes available, shall set forth best practices for an applicant with a prior conviction to use when applying for a license.

(2) In each notice to deny, revoke, or suspend a registration or to deny a person the opportunity be examined for a registration, the State Securities Board shall include a link to the guide as described in paragraph (1) of this subsection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2019.

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Travis J. Iles
Securities Commissioner
State Securities Board
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Proposal publication date: September 6, 2019
For further information, please call: (512) 305-8303

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7 TAC §116.18

The Texas State Securities Board adopts an amendment to §116.18, concerning Special Provisions Relating to Military Applicants, with changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4804). The amended rule will be republished.

Subsection (h)(4)(B) in §116.18 has been changed to include the language "Texas, or makes a notice filing pursuant to §116.1(b)(2) of this chapter, in" to encompass persons making a notice filing rather than registering.

The amendment implements the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session, which authorizes a military spouse to engage in a business or occupation for which a license or registration is required for the initial three-year period without obtaining the applicable license or registration. To be eligible the military spouse must hold a current license or registration, that is in good standing, issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for the license or registration in Texas. The amendment sets out the procedure an eligible military spouse would follow to obtain this treatment in connection with activities as a securities professional.

Regulatory and financial burdens are eased for certain military spouses, licensed and in good standing as securities professionals in another state, who are relocating to Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

§116.18. Special Provisions Relating to Military Applicants.

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

(1) Current registration--A registration or license that is:

(A) issued by another state, the District of Columbia, or a territory of the United States that has registration requirements that are substantially equivalent to the requirements for a Texas registration in the same capacity;

(B) in good standing; and

(C) in the same capacity as the application for registration in Texas.

(2) Good standing--A registration or license that is effective and unrestricted. A registration or license is considered to be restricted and not in good standing if it is subject to:

(A) an undertaking, special stipulations or agreements relating to payments, limitations on activity or other restrictions;

(B) a pending administrative or civil action; or

(C) an order or other written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation.

(3) Military spouse--A person who is married to a military service member.

(4) Military service member--A person who is on active duty.

(5) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(6) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Government Code, §437.001, or similar military service of another state.

(7) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(8) Military applicant--A military spouse, military service member, or military veteran.

(b) Expedited review of an application submitted by a military applicant as authorized by Occupations Code, §§55.004 - 55.006.

(1) A military applicant may use the procedure set out in this subsection if the military applicant:

(A) holds a current registration in another jurisdiction; or

(B) has been registered in Texas in the same capacity within the five years preceding the date of the application for registration.

(2) If the military applicant is not registered within five days of submitting an application, the military applicant may request special consideration of his or her application for registration by filing Form 133.4, Request for Consideration of a Registration Application by a Military Applicant, with the Securities Commissioner ("Commissioner"). Within five business days of receipt of the completed Form 133.4, the military applicant will be notified in writing of the reason(s) for the pending or deficient status assigned to the application.

(3) In addition to the waivers of examination requirements set out in §116.3 of this title (relating to Examination), the Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, §13.D, on a showing of alternative demonstrations of competency to meet the requirements for obtaining the registration sought.

(4) A military applicant proceeding under this subsection may be registered despite having pending and/or deficient items ("deficiencies"). The deficiencies will be communicated to the military applicant in writing or by electronic means within five business days from approval of the registration.

(5) The deficiencies noted at the time the registration is granted must be resolved by the military applicant within a 12 month period. Failure to resolve outstanding deficiencies will cause the registration granted under this subsection or any renewal of such registration to automatically terminate 12 months after the date the registration was initially granted pursuant to this subsection.

(c) Waiver or refund of initial application fee and Texas Securities Law Examination fee for a military applicant as authorized by Occupations Code, §55.009.

(1) To qualify for a fee waiver or refund, the applicant must be:

(A) a military applicant who holds a current registration in another jurisdiction; or

(B) a military service member or military veteran whose military service, training, or education substantially meets all the requirements for the registration sought who submits Form 133.4, Request for Consideration of a Registration Application by a Military Applicant, with the applicant's registration application.

(2) To request a waiver or refund of a fee previously paid, the applicant must submit Form 133.19, Waiver or Refund Request by a Military Applicant.

(A) If requesting a waiver of the fee to take the Texas Securities Law Examination, Form 133.19 must be submitted when filing the request to take the Texas Securities Law Examination.

(B) If requesting a waiver of the initial application fee, Form 133.19 must be submitted with the initial application.

(C) If requesting a refund of the initial application fee or Texas Securities Law Examination fee that was paid in error, Form 133.19 must be submitted within four years from the date the fee was collected or received.

(d) Registration of persons with military experience as authorized by Occupations Code, §55.007.

(1) An applicant who is a military service member or military veteran may request special consideration of verified military service, training, or education towards registration requirements, other than an examination requirement, for the registration sought by submitting Form 133.4, Request for Consideration of a Registration Application by a Military Applicant, with the applicant's registration application.

(2) The procedure authorized by this subsection is not available to a military service member or military veteran who:

(A) is registered in another jurisdiction but such registration is not in good standing; or

(B) has been convicted of a crime that could be the basis for denial of the registration pursuant to the Texas Securities Act, §14.A.

(e) Renewals by military service members. If a military service member's registration is not renewed in a timely manner, the military service member may renew the registration pursuant to this subsection.

(1) Renewal of the registration may be requested by the military service member, the military service member's spouse, or an individual having power of attorney from the military service member. The renewal application shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or within two years after expiration of the registration.

(3) A copy of the official orders or other official military documentation showing that the military service member is or was on active duty shall be submitted to the Securities Commissioner along with the renewal application.

(4) A copy of the power of attorney from the military service member, if any, shall be filed with the Securities Commissioner along with the renewal application if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A renewal application submitted to the Securities Commissioner pursuant to this subsection shall be accompanied by the applicable renewal fee set out in §116.8 of this title (relating to Fee Requirements).

(6) The State Securities Board will not assess any increased fee or other penalty against the military service member for failure to timely renew the registration if it is established to the satisfaction of the Securities Commissioner that all requirements of this subsection have been met.

(f) Other provisions in this chapter.

(1) Unless specifically allowed in this section, an applicant must meet the requirements for registration or renewal specified in this chapter. This includes the requirement that certain filings be made electronically through the IARD.

(2) A one-year period, instead of the 90-day period contained in §116.2 of this title (relating to Application Requirements), will apply to the automatic withdrawal of an application for which a Form 133.4 is properly filed.

(g) Additional information. An applicant receiving special consideration pursuant to this section in connection with a registration application or renewal shall provide any other information deemed necessary by the Commissioner. Such information may include, but is not limited to documentation:

(1) demonstrating status as a military spouse, service member, or military veteran;

(2) to determine whether the applicant meets licensing requirements through some alternative method;

(3) relating to prior military service, training, or education that may be credited towards a registration requirement; or

(4) to determine an investment adviser's financial responsibility or an investment adviser's or investment adviser representative's business repute or qualifications.

(h) Recognition of out-of-state license or registration of a military spouse as authorized by Occupations Code, §55.0041.

(1) A military spouse may use the procedure set out in this subsection if he or she holds a current registration in another jurisdiction.

(2) The period covered by this subsection is only for the time during which the military service member to whom the military spouse is married is stationed at a military installation in Texas. This period may not exceed three years from the date the military spouse:

(A) first becomes registered, or makes a notice filing pursuant to §116.1(b)(2) of this chapter (relating to general provisions), in Texas under Option 1, set out in paragraph (3) of this subsection; or

(B) first receives the confirmation from the Registration Division under Option 2, set out in paragraph (4)(C)(ii) of this subsection.

(3) Option 1: registration in Texas, or a notice filing made pursuant to §116.1(b)(2) of this chapter, with waiver or refund of the initial filing fee and renewal fees. If the military spouse is registered or notice filed in Texas, for all or part of the period set out in paragraph (2) of this subsection, he or she may request a waiver or refund of a fee previously paid.

(A) The initial filing fee may be waived or refunded by following the procedure set out in subsection (c) of this section, including filing Form 133.19, Waiver or Refund Request by a Military Applicant.

(B) A renewal fee may be waived by submitting Form 133.22, Waiver or Refund Request by a Military Spouse for a Renewal Fee, at the time the renewal is submitted. A refund of a renewal fee that was paid in error, is requested by submitting Form 133.22 within four years from the date the fee was collected or received.

(4) Option 2: notification and authorization of activity without registration, or notice filing pursuant to §116.1(b)(2) of this chapter. Upon confirmation under subparagraph (C) or (D) of this paragraph, the military spouse will be considered to be notice filed in Texas. Such notice filing expires at the end of the calendar year.

(A) A military spouse may engage in activity without a license or registration under the authority of Occupations Code, §55.0041, and this paragraph, only for the period specified in paragraph (2) of this subsection.

(B) A military spouse who becomes ineligible under Occupations Code, §55.0041, or paragraph (1) or (2) of this subsection prior to the three year period identified in paragraph (2), must notify the Securities Commissioner of such ineligibility within 30 days and

immediately cease activity until such time as he or she is registered in Texas, or makes a notice filing pursuant to §116.1(b)(2) of this chapter, in the appropriate capacity to conduct activity in Texas.

(C) Before engaging in an activity requiring registration in Texas, or a notice filing pursuant to §116.1(b)(2) of this chapter, in Texas, the military spouse must initially:

(i) provide notice of his or her intent to engage in activity in Texas and specify the type of activity by filing with the Securities Commissioner:

(I) Form 133.23, Request for Recognition of Out-Of-State License or Registration by a Military Spouse;

(II) proof of his or her residency in Texas; and

(III) a copy of his or her military identification card.

(ii) receive confirmation that the Registration Division:

(I) has verified the individual's license in another jurisdiction; and

(II) authorizes the individual to engage in the specified activity.

(D) To continue to conduct business without registration in Texas, or a notice filing pursuant to §116.1(b)(2) of this chapter, under Option 2, after the expiration of the initial confirmation under subparagraph (C)(ii), the military spouse must renew annually on the same schedule as renewals of registration. This enables the Registration Division to determine that the military spouse remains eligible under Occupations Code, §55.0041, to continue to conduct securities activities in Texas without being registered.

(i) A renewal is made by submitting the same documents identified in subparagraph (C)(i) of this paragraph.

(ii) A renewal is not effective until the military spouse receives confirmation that the Registration Division:

(I) has verified the individual's license in another jurisdiction; and

(II) authorizes the individual to engage in specified activity.

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 October 23, 2019.

TRD-201903879
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 12, 2019
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For further information, please call: (512) 305-8303

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7 TAC §116.22

The Texas State Securities Board adopts new rule §116.22, concerning electronic submission of forms and fees, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4806). The new rule will not be republished.

The new rule implements a management recommendation of the Sunset Advisory Commission to allow investment adviser and investment adviser representative applicants the option to electronically submit certain registration documents (not presently filed through the IARD system) with the Agency.

Burdens on filers are reduced by providing online submission of application forms and supplemental documents currently being submitted on paper.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

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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Travis J. Iles
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State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §§133.5, 133.6, 133.8, 133.12, 133.13, 133.16, 133.18, 133.26, 133.29, 133.30, 133.34 - 133.36

The Texas State Securities Board adopts the repeal of thirteen rules, concerning forms adopted by reference. Specifically, the Board adopts the repeal of §133.5, a form concerning Secondary Trading Exemption Notice; §133.6, a form concerning Secondary Trading Exemption Renewal Notice; §133.8, a form concerning Power of Attorney; §133.12, a form concerning Renewal Application for Mutual Funds and Other Continuous Offerings; §133.13, a form concerning Application for Renewal Permit; §133.16, a form concerning Texas Crowdfunding Portal Withdrawal of Registration; §133.18, a form concerning Certification of Balance Sheet by Principal Financial Officer; §133.26, a form concerning Request for Determination of Money Market Fund Status for Federal Covered Securities; §133.29, a form concerning Intrastate Exemption Notice; §133.30, a form concerning Information Concerning Projected Market Prices and Related Market Information; §133.34, a form concerning Undertaking Regarding Non-Issuer Sales; §133.35, a form concerning Application for Designation as Matching Service under §109.15; and §133.36, a form concerning Request for Reduced Fees

for Certain Persons Registered in Multiple Capacities, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4807). The repealed rules will not be republished.

The repeals implement recommendations made by the Texas Sunset Advisory Commission to eliminate notarization and sworn under oath requirements for forms when the Texas Securities Act does not otherwise require the form to be sworn. New replacement forms that are certified to be true and correct and signed under penalty of perjury are being concurrently adopted.

Thirteen existing forms containing burdensome notarization requirements or sworn under oath requirements have been eliminated so they can be replaced.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The repeals affect Texas Civil Statutes, Articles 581-5, 581-7, 581-8, 581-12, 581-18, and 581-42.

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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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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7 TAC §§133.5, 133.6, 133.8, 133.12, 133.13, 133.16, 133.18, 133.26, 133.29, 133.30, 133.34 - 133.36

The Texas State Securities Board adopts thirteen rules, concerning forms adopted by reference. Specifically, the Board adopts new §133.5, a form concerning Secondary Trading Exemption Notice; §133.6, a form concerning Secondary Trading Exemption Renewal Notice; §133.8, a form concerning Consent to Service; §133.12, a form concerning Renewal Application for Mutual Funds and Other Continuous Offerings; §133.13, a form concerning Application for Renewal Permit; §133.16, a form concerning Texas Crowdfunding Portal Withdrawal of Registration; §133.18, a form concerning Certification of Balance Sheet by Principal Financial Officer; §133.26, a form concerning Request for Determination of Money Market Fund Status for Federal Covered Securities; §133.29, a form concerning Intrastate Exemption Notice; §133.30, a form concerning Information Concerning Projected Market Prices and Related Market Information; §133.34, a form concerning Undertaking Regarding Non-Issuer Sales; §133.35, a form concerning Application for Designation as Matching Service under §109.15; and §133.36, a form concerning Request for Reduced Fees for Certain Persons Registered in Multiple Capacities, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4808). The new rules will not be republished.

The new sections adopt by reference forms that were updated to implement a recommendation made by the Texas Sunset Advisory Commission to remove the notarization requirements from forms when the Texas Securities Act doesn't otherwise require the form to be sworn. Instead, the new forms are certified to be true and correct and are signed under penalty of perjury.

The thirteen new forms provide more efficiency in the filing of forms with the Board by removing unnecessary administrative burdens.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The new rules affect Texas Civil Statutes, Articles 581-5, 581-7, 581-8, 581-12, 581-18, and 581-42.

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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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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7 TAC §133.22, §133.23

The Texas State Securities Board adopts new §133.22, a form concerning Waiver or Refund Request by a Military Spouse for a Renewal Fee, and new §133.23, a form concerning Request for Recognition of Out-Of-State License or Registration by a Military Spouse, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4810). The new rules will not be republished.

The new sections adopt by reference forms that were created to correspond with amendments to §115.18 and §116.18, which are concurrently adopted and implement the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session. The new forms allow military spouses to apply for a waiver or refund

of a renewal fee and allow a military spouse eligible for non-registration to provide the Agency with information needed to determine eligibility for such treatment.

Regulatory and financial burdens are eased for eligible military spouses providing them with forms to either obtain a waiver or refund of renewal fees or to practice securities business in Texas without being registered.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The new rules affect Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

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-201903884
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 12, 2019
Proposal publication date: September 6, 2019
For further information, please call: (5122) 305-8303

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7 TAC §133.33

The Texas State Securities Board adopts an amendment to §133.33, concerning uniform forms accepted, required, or recommended, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4810). The amended rule will not be republished.

The amended rule adds the Regulation A - Tier 2 form to the list of uniform forms accepted by the Agency. This form is used for making the required notice filings for this type of federal covered securities. A related change to §114.4 is concurrently adopted.

More efficiency is provided for Regulation A+ filings by permitting Regulation A+ filers to use a uniform form, accepted in multiple jurisdictions, to notice file when offering this type of federal covered securities in Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-5.

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 October 23, 2019.

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Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 12, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 305-8303

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts without changes amendments to 10 Texas Administrative Code, Chapter 80, §§80.2, 80.21 and 80.73, relating to the regulation of the manufactured housing program. The amendments to §80.41 and new §80.95 are adopted with non-substantive changes to correct punctuation (changed semi-colon to a period in §80.41(g)(2)(C) and removed a comma in §80.95(c)). The rules are revised to comply with House Bill 2315 (86th Legislature, 2019 regular session) that amends the Manufactured Housing Standards Act and for clarification purposes. The text to the adopted rules with changes will be republished in the *Texas Register* and the text to the rules adopted without changes will not be republished in the *Texas Register.* The proposed amendments were published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4811).

The adoption of §80.21 relating to installation standards is effective sixty (60) days following the date of publication in the *Texas Register* of notice that the rules are adopted. All other rules are effective thirty (30) days following the date of publication in the *Texas Register.*

The rules as proposed on September 6, 2019, are adopted as final rules with the exception of the punctuation changes in §80.41 and §80.95.

There were no comments received suggesting changes to the proposed rules during the comment period and no requests were received for a public hearing to take comments on the rules.

The Texas Manufactured Housing Association submitted a response in support of the proposed rules.

The following is a restatement of the rules' factual basis:

10 Texas Administrative Code §80.2(26) is adopted without changes to define a serious violation. §1201.605(c)(1) of the Texas Occupations Code allows the Department to use the seriousness of a violation to help determine the proper penalty amount. However, the term "seriousness of a violation" is vague. A definition will assist to determine how and when the department should consider a violation as serious when determining the penalty.

10 Texas Administrative Code §80.21(h) is adopted without changes to remove the rental community exception for drainage site preparation. The installer is responsible for proper site drainage where a new manufactured home is installed, pursuant to 24 CFR §3285.203. The Code of Federal Regulation does not allow an exception for rental communities. The Code of Federal Regulation does not apply to the installation of used manufactured homes.

10 Texas Administrative Code §80.41 (g)(1)(B), (2)(D), (3)(D) is adopted with a non-substantive change in (g)(2)(C) to correct the semi-colon at the end of the sentence to a period. The amendments to clarify the exemption for retailer's licenses. The Department wanted to clarify that this exemption only applies to the sale of up to three manufactured homes within a twelve (12) month period to ensure it was consistent with the statutory authority found in §1201.1025 of the Texas Occupations Code. Clarification was also needed to demonstrate the homes may not be sold until the letter of exemption is granted.

10 Texas Administrative Code §80.73(b)(3) is adopted without changes to clarify the timeline for conducting a proper warranty inspection. Pursuant to §1201.355 of the Texas Occupations Code, if a *proper* warranty service is not provided, and an inspection is requested the Department has thirty (30) days to conduct an inspection from the date the request is made. When a complaint is received it may not be a valid complaint within the Department's jurisdiction. It must be determined that a proper warranty service was not provided within the warranty deadline. The thirty (30) day deadline to conduct an inspection should begin after the complaint is validated, to ensure Department's resources are not wasted on inspections that are not within the Department's jurisdiction.

10 Texas Administrative Code New §80.95 is adopted with a non-substantive change to implement House Bill 2315 introduced during the 86th Texas Legislative Session. House Bill 2315, adopted in the 86th Texas Legislative Session, required the Department to adopt rules for the application for and automatic issuance of a Statement of Ownership for a federal governmental agency providing temporary housing in response to a natural disaster or other declared emergency. The addition of §1201.2071 of the Texas Occupations Code, Exemption for Certain Emergency Housing, will take effect September 1, 2019.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.2

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2019.

TRD-201903971
Joe A. Garcia
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 8, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 475-2206

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SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.21

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. LICENSING

10 TAC §80.41

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Oc-

cupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

§80.41. License Requirements.

(a) General License Requirements. In order to apply to obtain a license, the promulgated form of application for such license must be fully completed and executed and submitted to the Department, accompanied by the required fee, required security, and all other required supporting documentation. The Department may request any reasonably related additional information or documentation to clarify or support any application.

(1) Additional provisions applicable to salespersons.

(A) A salesperson is an agent of their sponsoring retailer or broker. The sponsoring retailer or broker is liable and responsible for the acts or omissions of a salesperson in connection with any activity subject to the Standards Act or this Chapter. It is a violation of the Standards Act and this chapter for a retailer or broker of manufactured housing to employ a salesperson who is not licensed with the Department or permit them to conduct business subject to the Standards Act on their behalf.

(B) If a salesperson's sponsoring retailer or broker is no longer licensed, that salesperson's ability to act and a salesperson is automatically terminated until such time as he or she is acting under a duly licensed sponsoring retailer or broker and such sponsorship is on record with the Department. A salesperson shall surrender his or her license to the Department within ten (10) calendar days of termination from his or her sponsoring retailer.

(C) A sponsoring retailer or broker shall notify the Department in writing when a salesperson has been terminated or is no longer sponsored by said retailer or broker.

(D) A salesperson's sponsoring retailer or broker shall be issued a license card by the Department containing effective date and license number and name and license number of the sponsor. A salesperson shall be required to present a copy of a valid license card upon request.

(2) Additional provisions applicable to installers.

(A) A provisional installer's license shall become a full installer's license as outlined in §1201.104(f) of the Standards Act when the Department inspects a minimum of five (5) manufactured home installations and found not to have any identified installation violations.

(B) It is the responsibility of an installer who is still on a provisional status to notify the Department of each installation performed promptly. As used in this section, "promptly" means sufficiently early to enable the home to be inspected prior to any skirting being installed, in any event within three business days following the date of completion of the installation.

(C) It is the responsibility of the Department's field office to notify the Department's licensing section when a provisional installer's license is eligible for upgrade to a full installer's license.

(b) Applicable License Holder Ownership Changes.

(1) A license holder shall not change the location of a licensed business unless the license holder first files with the Department:

(A) a written notification of the address of the new location;

(B) an endorsement to the bond reflecting the change of location; and

(C) the original license.

(2) The change of location is not effective until all requirements are received by the Department.

(3) For a change in ownership of less than fifty percent (50%) of the licensed business entity, no new license is required provided that the existing bond or other security continues in effect. However, the current Articles of Incorporation or Assumed Name Certificate must accompany the request.

(4) For a change in ownership of fifty percent (50%) or more, the license holder must file with the Department, along with the appropriate fee and Articles of Incorporation or Assumed Name Certificate:

(A) a license addendum by the purchaser providing information as may be required by the Department; and

(B) certification by the surety that the bond for the licensed business entity continues in effect after the change in ownership; or

(C) an application for a new license along with a new bond or other security and proof that the education requirements of §1201.113 of the Standards Act, have been met.

(c) Education.

(1) The Standards Act requirement for an initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations; four (4) hour retailer education course; and/or four (4) hour installer education course shall be offered quarterly by the Department. Subject to limitations on Department resources, the Department will make special licensing classes available upon written request.

(2) Each test to be administered in connection with the course(s) will consist of a representative selection of questions from an approved set of questions approved by the Director. The test(s) will be open-book. A score of 70% correct is required to pass each test.

(3) For initial licensing of a salesperson, if the salesperson does not attend and successfully complete the initial licensing class provided by the Department within 90 days after the date of licensure, the license will automatically be suspended until the salesperson has attended and successfully completed that class. While the license is in a suspended status the salesperson may not act as a manufactured housing salesperson.

(4) All related persons added to a retailer's license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations and the four (4) hour retailer education course prior to being added to the retailer's license.

(5) All related persons added to an installer's license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations and the four (4) hour installer education course prior to being added to the installer's license.

(6) All related persons added to a retailer/installer license or retailer/ installer/broker license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations; the four (4) hour retailer education

course; and the four (4) hour installer education course prior to being added to the license.

(7) All related persons added to a manufacturer's license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations prior to being added to the manufacturer's license.

(8) All related persons added to a broker's license are required to take the initial eight (8) hour course of instruction in the law, including instruction in consumer protection regulations prior to being added to the broker's license.

(d) Continuing Education.

(1) Continuing education program courses must total eight (8) hours and shall include:

(A) Continuing education addressing the law and rules with a focus on any revisions to the Code or Rules within the preceding two years.

(B) Continuing education addressing the Department's current complaint resolution process.

(C) The following additional topics may be covered:

(i) installation requirements;

(ii) manufactured home financing;

(iii) operation of manufactured home parks and communities;

(iv) insurance requirements;

(v) industry best practices;

(vi) business ethics;

(vii) topical market statistics or trends; or

(viii) other subjects determined by the Department to relate directly to the lawful operation of a business subject to the Code.

(2) Acceptable evidence that the requirements of §1201.113(b) of the Standards Act have been satisfied by the license holder or their related person on record with the Department, would be a certificate, letter, or similar statement provided by the approved education provider indicating that the education program was timely completed. Such evidence may be submitted by fax, mail, e-mail, or in person. All related persons listed on a license are required to complete the eight (8) hours of continuing education required every two years.

(3) For license renewal, evidence of any required completion, with reference to license number, must be received by the Department before a license may be renewed.

(4) Approval of courses and providers. In order to be considered for approval by the Board to provide continuing education courses, including prospective continuing education courses in accordance with paragraph (5) of this subsection, a party wishing to be considered for such approval must submit an application, accompanied by the nonrefundable processing fee, and the following:

(A) A narrative overview of each course, describing subject matter to be covered;

(B) Brief biographies, including credentials of each instructor demonstrating in depth knowledge of the subject matter to be taught;

(C) A copy of any course materials to be used. If the course materials are deemed to be proprietary they should be placed in a separate envelope, marked confidential, and accompanied by a written statement as to why they should not be treated as open records. There is no assurance that such materials will ultimately be accorded any exemption from disclosure under the Open Records provisions of the Government Code;

(D) A schedule of any fees to be charged for each course;

(E) If completion of the continuing education program is limited to any particular group, a description of the limitation;

(F) As such information becomes available, an indication as to the locations, times, and dates for offerings; and

(G) Such other information as the Department may require.

(5) Prospective continuing education programs, including all portions of education courses, must be pre-approved by the board prior to the course being held or broadcast.

(6) Once the Department determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the Board for consideration. The Department will provide the board with a written recommendation on each such request. The staff will advise the applicant of the board's action within ten (10) business days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

(A) Approvals shall be for a period not to exceed two years. The Department may, at no cost, attend or send a representative to attend any approved portion of the continuing education program to determine that the courses are being taught in accordance with the terms of approval.

(B) Should the two-year approval time for a continuing education provider expire in between regularly scheduled board meetings, the executive director may issue approval to continue providing services until the next board meeting upon receipt of the required renewal application, fee, and necessary documentation of education material.

(C) The Department may revoke or suspend approval of a continuing education program if the Department determines that any of the courses are not being taught in accordance with the terms of approval or that any of the courses are not being administered in accordance with the law or these rules. Any action to revoke or suspend such an approval is a contested matter under Chapter 2001, Government Code, and the party against whom revocation or suspension is sought may make a written request for a hearing before an Administrative Law Judge. If no such hearing is requested within thirty (30) calendar days after receipt of notice from the Department, the Department order of suspension or revocation shall become final.

(e) License Application and Renewal.

(1) Initial Application Processing.

(A) It is the policy of the Department to issue the license within seven (7) business days after receipt of all required information and the following conditions have been met:

(i) all required forms are properly executed; and

(ii) all requirements of applicable statutes and this Chapter have been met.

(B) License applications and accompanying documents found to be incomplete or not properly executed shall be returned to the

applicant with an explanation of the specific reason and what information is required to complete license.

(C) Upon request, the Department will disclose the license number assigned and the effective date for a license that has been approved but not yet delivered to the license holder.

(2) License Renewal Requirements. It is the responsibility of a license holder to renew the license prior to its expiration date.

(A) In order to prevent the expiration and lapse of a license, a complete application for license renewal must be received by the Department prior to the date on which the current license expires.

(B) If an application for license renewal is received by the Department after the date on which the current license expires, the license will not be issued without the required late fees identified in §1201.116(d) and (e) of the Standards Act.

(3) Payment of license fees.

(A) All required fees must be paid in order to obtain a valid license, including a renewal license, from the Department.

(B) Any license issued by the Department is void and of no effect if based upon a check or other form of payment that is later returned for insufficient funds, closed account, or other reason, regardless of whether the Department notifies the applicant of the insufficiency of payment or the invalidity of the license.

(C) It is the applicant's responsibility to ensure that all licensing fees are paid in valid U.S. funds.

(4) Fingerprints and Criminal History Check.

(A) License applicants must submit a complete and legible set of fingerprints to a vendor approved by the Department of Public Safety, for the purpose of a criminal background check, which will be provided to the Department.

(B) The license applicant shall be responsible for the cost.

(f) License Application or Renewal Denial.

(1) In the evaluation of an applicant for a license, the Director shall consider whether the applicant or any related person involved with the applicant has previously:

(A) been found in a final order to have participated in one or more violations of the Standards Act that served as grounds for the suspension or revocation of a license;

(B) been found to have engaged in activity subject to the Standards Act without possessing the required license;

(C) caused the Manufactured Homeowner Consumer Claims Program to incur unreimbursed payments or claims;

(D) failed to abide by the terms of a final order or agreed final order, including the payment of any assessed administrative penalties; or

(E) had any state license revoked for violations of a law or rule.

(2) If any of the preceding factors is present with respect to the applicant or any related person involved with the applicant, the director will further determine:

(A) whether all appropriate corrective action has been taken;

(B) whether the applicant has adopted policies and procedures or taken other appropriate measures to prevent recurrences; and

(C) whether additional conditions or limitations on the license would be appropriate.

(3) In determining whether an applicant should be issued a license if that applicant states in his/her application for said license that he/she has a criminal record, which may include a conviction, deferred adjudication, plead guilty, or nolo contendere for any felony or misdemeanor offense, other than a Class C Misdemeanor for traffic violations, within five (5) years preceding the date of the application, the Director shall consider the factors set out in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the intended manufactured housing business activity;

(C) the extent to which a license holder might engage in further criminal activity of the same or similar type as that in which the applicant previously had been involved;

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the functions and responsibilities of the license holder's occupation or industry; and

(E) whether the offenses were defined as crimes of moral turpitude by statute or common law, from Class A misdemeanors to first, second, and third degree felonies carrying fines and/or imprisonment or both. Special emphasis shall be given to the crimes of robbery, burglary, theft, embezzlement, sexual assault, and conversion.

(4) In addition to the factors that may be considered in paragraph (3) of this subsection, the Department, in determining the present fitness of a person who has a criminal record, may consider the following:

(A) the extended nature of the person's past criminal activity;

(B) the age of the person at the time of the commission of the crime;

(C) the amount of time that has elapsed since the person's last criminal record;

(D) the conduct and work activity of the person prior to and following the criminal record; and

(E) evidence of the person's rehabilitation or attempted rehabilitation effort while incarcerated or following release.

(5) The applicant shall furnish proof in any form, as may be required by the Department, that he/she has maintained a record of steady employment and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases.

(6) If the Department suspends or revokes a valid license, or denies a person a license or the opportunity to be considered for a license in accordance with this subsection because of the person's prior criminal record and the relationship of the crime to the license, the Department shall:

(A) notify the person in writing stating reasons for the suspension, revocation, denial, or disqualification; and

(B) offer the person the opportunity for a hearing on the record. If the person does not request a hearing on the matter within

thirty (30) calendar days from receipt of the Department's decision, the suspension, revocation, or denial becomes final.

(g) Exemption for Retailer's License Requirement.

(1) Application for Exemption of Retailer's License Requirement.

(A) A person requesting exemption from the Retailer's licensing requirement of §1201.101(b) of the Occupations Code, shall submit the required application outlining the circumstances under which they are requesting exemption from licensure.

(B) Applications should identify the HUD label or serial number(s) of up to three (3) homes being sold under the exemption;

(C) Applications will be processed within seven (7) business days after receipt of all required information.

(2) The circumstances under which this exemption is granted are:

(A) One-time sale of up to three (3) manufactured homes in a 12-month period as personal property;

(B) Non-profit entity transferring ownership of up to three (3) manufactured homes in a 12-month period; and/or

(C) No other manufactured homes have been purchased and resold in the previous twelve (12) months, even with a previous exemption.

(3) Letter of Exemption.

(A) Once granted, a Letter of Exemption from licensure will be issued by the Executive Director to the applicant.

(B) Letter of Exemption is valid only for the manufactured home(s) specified.

(C) Letter of Exemption is valid only for twelve (12) months.

(D) The homes may not be sold until the Letter of Exemption is granted.

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 E. ENFORCEMENT

10 TAC §80.73

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP

10 TAC §80.95

The new rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the new rule.

§80.95. Recording Ownership for Emergency Housing.

(a) A federal government agency that purchases a manufactured home to provide temporary housing in response to a natural disaster or other declared emergency may apply for a statement of ownership using the Statement of Ownership Application for Federal Governmental Agency.

(b) The Department may also accept a Certificate to Obtain Title signed by the federal government agency or their authorized representative in lieu of the Statement of Ownership Application for Federal Governmental Agency.

(c) The Department shall apply priority and special handling when an application for emergency housing in conjunction with a natural disaster or declared emergency is received.

(d) The Department may waive or refund any fees for emergency housing affiliated with a governor's executive order or proclamation that declares a state of disaster under Chapter 418 of the Government Code in the affected area.

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §89.1094

The Texas Education Agency (TEA) adopts new §89.1094, concerning special education services. The new section is adopted with changes to the proposed text as published in the June 28, 2019 issue of the *Texas Register* (44 TexReg 3211) and will be republished. The adopted new section establishes provisions for TEA's approval and monitoring of off-campus programs for students receiving special education and related services.

REASONED JUSTIFICATION: Adopted new 19 TAC §89.1094 establishes the process for placing a student in an off-campus setting or program to fulfill the requirements under the Individuals with Disabilities Education Act (IDEA), Part B, in providing a continuum of alternative placements, ensuring monitoring of placements to maintain the provision of a free appropriate public education (FAPE), ensuring state monitoring of implementation of IDEA, and ensuring appropriateness of state and federal funding for students placed in off-campus programs. The new rule applies to all non-district facilities where special education services are provided.

Specifically, the new rule provides procedures for placement of students in off-campus programs that are on approved provider lists, programs not on the approved provider list, and programs in which a student is ordered to be placed by a special education hearing officer or judge.

The new rule also establishes a process for the approval and renewal of off-campus programs, identifies the period of approval and renewal, and establishes funding procedures and parameters for students placed in such settings.

In response to public comment, a clarifying change was made to the rule since published as proposed. Language in subsection (a)(2), which specifies the definition of an off-campus program, was modified to add "by someone other than school district personnel" in the definition of special education and related services provided during school hours in a facility other than a school district campus.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 28, 2019, and ended July 29, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: A representative of Disabilities Right Texas (DRTx) emphasized the need for oversight and monitoring to ensure students in out-of-district placements, including "county system(s)," are receiving the related services and specialized evidence-based instruction necessary for each student to make meaningful progress and receive a FAPE.

Agency Response: The agency agrees.

Comment: A representative of DRTx expressed agreement that at least "two on-site visits annually" is necessary in order to ensure individualized education program (IEP) implementation and the wellbeing of the student.

Agency Response: The agency agrees that annual onsite visits are necessary and notes that the rule requires two visits annually.

Comment: A representative of Texas Council of Administrators of Special Education (TCASE) and representatives of DRTx proposed to add clarifying language in the definition of an "off-campus program" that would revise the definition to state, "An off-campus program includes special education and related services provided during school hours in a facility other than a school district campus and that are not provided by school district personnel."

Agency Response: The agency agrees that the specification of services not provided by school district personnel should be added and has modified subsection (a)(2) at adoption to clarify the definition of an off-campus program.

Comment: A representative of TCASE and representatives of DRTx proposed to add subsection (a)(4) that would add additional exclusionary language to the rule eliminating programs (not operated by a school district) that prepare students for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement by school district personnel.

Agency Response: The agency disagrees. The rule seeks to clarify responsibilities under IDEA for local education agencies (LEAs) when placing students in programs or facilities other than those operated by the LEA. Additionally, the rule seeks to clarify the TEA's responsibility to ensure a FAPE to all eligible students in the state through procedures for placement of students in these programs and facilities. Exclusion of a certain population of students, who may also be placed in programs or facilities other than those operated by the LEA, would not comply with the requirements found in 34 CFR §300.146 and §300.147.

Comment: A representative of TCASE and representatives of DRTx proposed to add language to emphasize that off-campus placements should be limited to those that deliver a FAPE in the least restrictive environment (LRE). The commenters recommended modifying subsection (b)(3) to state, "... if the committee determines that a FAPE is best provided to the student in this placement and is determined to be the least restrictive environment, or the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily education in the school district."

Agency Response: The agency agrees that an off-campus placement is only appropriate when an admission, review, and dismissal (ARD) committee has determined that such a placement is necessary in order for a student to receive a FAPE in the LRE. However, TEA disagrees with adding the suggested language. It is not necessary to explicitly reiterate the FAPE and LRE requirements of IDEA in rule.

Comment: A representative of TCASE and representatives of DRTx proposed to add language to clarify what must be included in the student's IEP. The commenters recommended modifying subsection (b)(3)(A) to add, "... or when applicable, which services the school district will provide and which services the off campus program provider will provide for the provision of a free appropriate public education" to the end of the proposed sentence.

Agency Response: The agency agrees that the IEP must include a clear statement of the services to be provided by the school district and those to be provided by the facility. However, because subsection (b)(3)(A) seeks to specifically identify which services the school district is unable to provide that will be provided by the facility, TEA disagrees that the suggested additional language is necessary.

Comment: A representative of TCASE and representatives of DRTx proposed to clarify that the school district, during its two annual onsite visits, obtain written verification that the facility meets the specified minimum standards. The commenters recommended modifying subsection (b)(3)(C)(ii) to state, "obtain written verification from the facility that it meets minimum standards for health and safety and holds applicable local and state accreditation and permit requirements."

Agency Response: TEA disagrees with the recommended changes at subsection (b)(3)(C)(ii). The agency acknowledges that the written verification will, in most cases, be obtained from the facility. However, the LEA should not be limited from obtaining written verification from the licensing agency in meeting the intent of this requirement during its two annual onsite visits.

Comment: A school attorney commented that the proposed rule is unclear about whether the obligations for outside placement would be required if the school district decided to settle a dispute, due process hearing, complaint, or litigation by agreeing to pay for the student to attend an outside facility that the parent desires, even when the district believes it can educate the student such that outside placement would be unnecessary. The commenter proposed to add language to make clear that if a decision to place outside of the district resulting from a dispute settlement agreement occurs, then the rule would not apply.

Agency Response: The agency disagrees. The rule applies any time a school district seeks to use state or federal funds to place a student in an off-campus program for the provision of FAPE. In addition, IDEA requires TEA as the state education agency to ensure that a child with a disability who is placed in or referred to a private school or facility by a school district is provided a FAPE.

Comment: A representative from Texas Classroom Teachers Association (TCTA) proposed to strike the word "satisfactorily" due to inability to find it defined anywhere in the rule, or trackable in federal/state law/regulations and to replace with another term such as "appropriately."

Agency Response: The agency disagrees. Federal law, 34 Code of Federal Regulations (CFR), §300.114, requires each school district to ensure that "special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." An ARD committee must consider all relevant information and data in determining the LRE for the student.

Comment: A Texas school administrator expressed concerns with subsection (b)(3), relating to specification of what services must be listed in a student's IEP, as it relates to compliance with this requirement for students in an 18+ program who access a local non-profit agency that provides community activities and a peer group experience in preparation for their post-secondary experience.

Agency Response: The agency disagrees. The rule seeks to clarify a school district's responsibilities under IDEA when placing a student in programs or facilities other than those operated by the district. Additionally, the rule seeks to clarify the TEA's responsibility to ensure a FAPE to all eligible students in the state through procedures for placement of students in these programs and facilities. Excluding a certain population of students, who may also be placed in programs or facilities other than those operated by the district, would not be in compliance with the requirements found in 34 CFR §300.146 and §300.147.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §29.001, which requires the state to have a statewide design, consistent with federal law, for the delivery of services to children with disabilities in the state; 34 Code of Federal Regulations (CFR), §300.115, which requires local education agencies (LEAs) to have available a continuum of alternative placements for students with disabilities; 34 CFR, §300.146 and §300.147, which require the state to monitor and ensure that students placed in or referred to a private school or facility by an LEA receive a free appropriate public education; and 34 CFR, §300.600, which gives the state general supervisory authority to monitor the implementation of the Individuals with Disabilities Education Act, Part B.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.001, and 34 Code of Federal Regulations, §§300.115, 300.146, 300.147, and 300.600.

§89.1094. Students Receiving Special Education and Related Services in an Off-Campus Program.

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

(1) School district--The definition of a school district includes independent school districts established under Texas Education Code (TEC), Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(2) Off-campus program--An off-campus program includes special education and related services provided during school hours by someone other than school district personnel in a facility other than a school district campus.

(3) Off-campus program provider--An off-campus program provider is an entity that provides the services identified in subsection (a)(2) of this section and includes:

(A) a county system operating under application of former law as provided in TEC, §11.301;

(B) a regional education service center established under TEC, Chapter 8;

(C) a nonpublic day school; or

(D) any other public or private entity with which a school district enters into a contract under TEC, §11.157, for the provision of special education services in a facility other than a school district campus operated by a school district.

(b) Off-campus program placement. A school district may contract with an off-campus program provider to provide some or all of the special education and related services to a student in accordance with the requirements in this section.

(1) Before the school district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct an onsite review to ensure that the off-campus program is appropriate for meeting the student's educational needs.

(2) Before the school district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct a meeting of the student's admission, review, and dismissal (ARD) committee to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in Chapter 89 of this title (relating to Commissioner's Rules Concerning Special Education Services).

(3) The appropriateness of the off-campus program for each student placed shall be documented in the IEP annually. The student's ARD committee may only recommend an off-campus program placement for a student if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the facility will provide.

(B) The ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school and document this information in the IEP.

(C) The school district shall make two on-site visits annually, one announced and one unannounced, to:

(i) verify that the off-campus program can, and will, provide the services listed in the student's IEP that the off-campus program has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds applicable local and state accreditation and permit requirements; and

(iii) verify the educational program provided at the off-campus program facility is the least restrictive environment for the student.

(4) The placement of more than one student in the same off-campus program facility may be considered in the same on-site visit to a facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

(c) Notification. Within 30 calendar days from an ARD committee's decision to place a student in an off-campus program, a school district must electronically submit to the Texas Education Agency (TEA) notice of, and information regarding, the placement in accordance with submission procedures specified by the TEA.

(1) If the off-campus program is on the commissioner's list of approved off-campus programs, the TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, the TEA will notify the school district whether federal or state funds for the off-campus program placement are approved. If the TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the off-campus program is not on the commissioner's list of approved off-campus programs, the TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If an off-campus program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify the TEA of the order within 30 calendar days. The off-campus program serving the student is not required to go through the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the off-campus program, the off-campus program will be required to go through the approval procedures to be included on the commissioner's list of approved off-campus programs.

(d) Approval of the off-campus program. Off-campus programs must have their educational programs approved for contracting purposes by the commissioner.

(1) For a program to be approved, the school district must electronically submit to the TEA notice of, and information regarding, the placement in accordance with submission procedures specified by the TEA. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the school district. Initial approval of the off-campus program shall be for one calendar year.

(2) The off-campus program may be approved only after, at minimum, a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) The commissioner shall renew approvals and issue new approvals only for those facilities that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. This approval does not apply to facilities that only provide related services. Nor does it apply to facilities when the school district, within which the facility is located, provides the educational program. Re-approval of the off-campus program may be for one, two, or three years at the TEA's discretion.

(e) Funding procedures and other requirements. The cost of off-campus program placements will be funded according to TEC, §42.151 (Special Education), and §89.63(e) of this title (relating to Instructional Arrangements and Settings).

(1) Contracts between school districts and approved off-campus programs must not exceed a school district's fiscal year and shall not begin prior to July 1 of the contracted fiscal year.

(2) Amendments to a contract must be electronically submitted to the TEA in accordance with submission procedures specified by the TEA no later than 30 calendar days from the change in placement or services within the school district's fiscal year.

(3) If a student who is placed in an off-campus program by a school district changes his or her residence to another Texas school district during the school year, the school district must notify the TEA within 10 calendar days of the date on which the school district ceased contracting with the off-campus program for the student's placement. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those de-

scribed in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new off-campus program placement.

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 October 21, 2019.

TRD-201903837
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 10, 2019
Proposal publication date: June 28, 2019
For further information, please call: (512) 475-1497

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CHAPTER 101. ASSESSMENT
SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE STATEWIDE TESTING CALENDAR AND UIL PARTICIPATION

19 TAC §101.5001

The Texas Education Agency (TEA) adopts an amendment to §101.5001, concerning the statewide testing calendar. The amendment is adopted without changes to the proposed text as published in the August 30, 2019 issue of the *Texas Register* (44 TexReg 4622) and will not be republished. The adopted amendment modifies the rule to provide clarification to new statutory provisions made by House Bill (HB) 3906, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Section 101.5001(a) allows the commissioner of education to determine the school week during the school year in which the primary administrations of assessment instruments are administered.

HB 3906, 86th Texas Legislature, 2019, amended the Texas Education Code, §39.023(c-3), to prohibit scheduling the State of Texas Assessments of Academic Readiness (STAAR®) testing on the first instructional day of the week. The adopted amendment modifies the rule to provide clarification indicating that Monday is "the first instructional day of a week" for the purpose of scheduling assessment instruments.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 30, 2019, and ended September 30, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: Administrators from Austin Independent School District (ISD) and Cypress-Fairbanks ISD commented that the rule should be clarified as to which assessment programs this new policy applies.

Response: The agency disagrees. The law specifies that this new policy applies to assessment instruments under TEC, §39.023(a) and (c), i.e., the Grades 3-8 and end-of-course assessments.

Comment: An individual commented that the rule would require students to test on a Tuesday in situations where a student holiday falls on a Monday.

Response: The agency agrees. Although the agency attempts to avoid testing on the first day after a state holiday, it is not always possible. For example, there are some weeks that involve scheduling four to five tests. The tests need to occur within the same week to limit security issues, and with the new law that only leaves four days to test.

Comment: Administrators from Austin ISD, Cypress-Fairbanks ISD, New Caney ISD, and Spring Branch ISD commented that high school students who need to take all five end-of-course assessments would not have enough time to take all five tests during the December or June administrations.

Response: The agency disagrees. Although it is not best practice, the agency does not prohibit administering more than one assessment per day if necessary. District personnel should consider this option on an individual student basis and determine what is in the best interest of the student.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §33.0812, which provides the commissioner the authority to establish the testing calendar; TEC, §39.023(c-3), as amended by House Bill 3906, 86th Texas Legislature, 2019, which limits the days in which testing may be scheduled for assessments under TEC, §39.023(a) and (c), by prohibiting testing on the first instructional day of a week.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §33.0812 and §39.023, as amended by House Bill 3906, 86th Texas Legislature, 2019.

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 October 21, 2019.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS
PART 9. TEXAS MEDICAL BOARD
CHAPTER 160. MEDICAL PHYSICISTS

22 TAC §160.31

The Texas Medical Board (Board) adopts new §160.31, concerning exemption from licensure for certain military spouses for medical physicists. The new rule is being adopted without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4814). The adopted will not be republished.

The new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure

for certain military spouses. This rule allows qualified military spouses to practice medical physics without obtaining a medical physicist license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

The Board has determined that the public benefit anticipated as a result of enforcing this section will be to increase patient accessibility to properly licensed, trained, and educated providers.

Written comments were received from The American Association of Physicists in Medicine regarding the new rule.

The American Association of Physicists in Medicine's comments identified two issues. The first issue was seeking clarity as the term "advisory committee," related to determining substantial equivalence. The second issue was the concern that licensing should be required.

The Texas Medical Board's response to AAPM was that the "advisory committee" is understood to the Medical Physicist Committee. The Board declined to make the clarification as unnecessary The statute is clear as to the authority related to educational standards is vested in the Medical Physicists Committee. The second change is declined because the exemption is statutory and cannot be changed by rule. No one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

Consistent with the reasoning stated above, the Board did not make the recommended changes and clarifications to the rule and submits the rule herein and proceeds with the adoption of §160.31.

The new rule is adopted under the authority of SB 1200 Texas Occupations Code §153.001 which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act, and to adopt rules necessary to regulate medical physicists. The new rule is also proposed under Texas Occupations Code §602.151 which mandates the Board to adopt rules to implement that 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 October 28, 2019.

TRD-201903991
Scott Freshour
General Counsel
Texas Medical Board
Effective date: November 17, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 305-7016

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CHAPTER 161. GENERAL PROVISIONS

The Texas Medical Board (Board) adopts amendments to 22 TAC §161.1, concerning Introduction, §161.2, concerning Purpose and Functions, §161.3, concerning Organization and Structure, §161.4, concerning Officers of the Board, §161.5, concerning Meetings, §161.6, concerning Committees of the Board and the repeal of §§161.8, 161.9, 161.11 - 161.13, without changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4930). The adopted rules will not be republished.

The Board determined that the amendments and deletions were necessary to accurately reflect the operations of the board and eliminate obsolete committees and their related functions.

The Board has determined that the public benefit anticipated as a result of enforcing this adoption will be to simplify and clarify the functions and operations of the board that are not otherwise clearly set out in statute. This increases public ability to understand the functions and duties of the board.

The adopted amendment to §161.1, relating to Introduction, adds language to recognize and include all advisory board and committees under TMB authority. The proposed amendment also deleted unnecessary repetitive statutory language.

The adopted amendment to §161.2, relating to Purpose and Functions, adds language to recognize and include all advisory board and committees under TMB authority, and the role of the board in determining qualifications and eligibility criteria for certain licenses and permits.

The adopted amendment to §161.3, relating to Organization and Structure, deletes unnecessary repetitive statutory language. The proposed amendment simplified rules relating to standards of eligibility, conduct, and potential grounds for removal of board members.

The adopted amendment to §161.4, relating to Officers of the Board, removes an incorrect word.

The adopted amendment to §161.5, relating to Meetings, deletes reference to certain committees that are disbanded, obsolete or unnecessary.

The adopted amendment to §161.6, relating to Committees of the Board, deletes unnecessary repetitive statutory language.

The repeal of §161.8, relating to Chief of Staff, deletes unnecessary repetitive statutory language.

The repeal of §161.9, relating to Medical Director, deletes unnecessary repetitive statutory language.

The repeal of §161.11, relating to Rule Changes, deletes unnecessary repetitive statutory language.

The repeal of §161.12, relating to Compliance with Non-Discrimination Laws, deletes unnecessary repetitive statutory language.

The repeal of §161.13, relating to General Considerations, deletes unnecessary repetitive statutory language.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

22 TAC §§161.1 - 161.6

The amendments are adopted under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

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 October 25, 2019.

TRD-201903976
Scott Freshour
General Counsel
Texas Medical Board
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Proposal publication date: September 13, 2019
For further information, please call: (512) 305-7016

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22 TAC §§161.8, 161.9, 161.11 - 161.13

The repeals are adopted under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

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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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 163. LICENSURE

22 TAC §163.3

The Texas Medical Board (Board) adopts new rule §163.3, concerning exemption from licensure for certain military spouses for physicians. The new rule is being adopted without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4815). The adopted rule will not be republished.

The new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses who are physicians. New rule, §163.3 Exemption from Licensure for Certain Military Spouses regarding Physicians, allows qualified military spouses to practice medicine without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

The Board has determined that the public benefit anticipated as a result of enforcing this proposal will be to increase patient accessibility to properly licensed, trained, and educated providers.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

The new rule is adopted under the authority of SB 1200 Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act, and to adopt rules necessary to regulate physicians. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that 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.

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 183. ACUPUNCTURE

22 TAC §183.27

The Texas Medical Board (Board) adopts new rule §183.27, concerning exemption from licensure for certain military spouses for acupuncturists. The new rule is being adopted without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4819). The adopted rule will not be republished.

The new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. New rule §183.27, Exemption from Licensure for Certain Military Spouses regarding acupuncturists, allows qualified military spouses to practice acupuncture without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

The Board has determined that the public benefit anticipated as a result of enforcing this proposal will be to increase patient accessibility to properly licensed, trained, and educated providers.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on October 19, 2019.

The new rule is adopted under the authority of SB 1200 Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate acupuncturists. The new rule is also proposed under Texas Occupations Code §205.101, which mandates the Board to adopt rules to implement that 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.

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.33

The Texas Medical Board (Board) adopts new rule §185.33, concerning exemption from licensure for certain military spouses for physician assistants. The new rule is being adopted without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4821). The adopted rule will not be republished.

The new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. New rule §185.33, Exemption from Licensure for Certain Military Spouses, allows qualified military spouses to practice as a physician assistant without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

The Board has determined that the public benefit anticipated as a result of enforcing this proposal will be to increase patient accessibility to properly licensed, trained, and educated providers.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

The new rule is adopted under the authority of SB 1200 (86th Regular Legislative Session), Texas Occupations Code §153.001 which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate physician assistants. The new rule is also proposed under Texas Occupations Code §204.101 which mandates the Board to adopt rules to implement that 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.

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Scott Freshour
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CHAPTER 186. RESPIRATORY CARE PRACTITIONERS

22 TAC §186.30

The Texas Medical Board (Board) adopts new rule §186.30, concerning exemption from licensure for certain military spouses for respiratory care practitioners. The new rule is being adopted without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4822). The adopted rule will not be republished.

The new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. New rule §186.30, Exemption from Licensure for Certain Military Spouses regarding respiratory care practitioners, allows qualified military spouses to practice as a respiratory care practitioner without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

The Board has determined that the public benefit anticipated as a result of enforcing this proposal will be to increase patient accessibility to properly licensed, trained, and educated providers.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

The new rule is adopted under the authority of SB 1200 Texas Occupations Code §153.001 which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate respiratory care practitioners. The new rule is also proposed under Texas Occupations Code §604.052 which mandates the Board to adopt rules to implement that 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.

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Scott Freshour
General Counsel
Texas Medical Board
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Proposal publication date: September 6, 2019
For further information, please call: (512) 305-7016

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CHAPTER 188. PERFUSIONISTS

22 TAC §188.30

The Texas Medical Board (Board) adopts new rule §188.30, concerning exemption from licensure for certain military spouses for perfusionists. The new rule is being adopted without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4823). The adopted rule will not be republished.

The adopted new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. New rule §188.30, Exemption from Licensure for Certain Military Spouses regarding perfusionists, allows qualified military spouses to practice as a perfusionist without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

The Board has determined that the public benefit anticipated as a result of enforcing this proposal will be to increase patient accessibility to properly licensed, trained, and educated providers.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

The new rule is adopted under the authority of SB 1200 Texas Occupations Code §153.001 which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate perfusionists. The new rule is also proposed under Texas Occupations Code §603.151 which mandates the Board to adopt rules to implement that 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.

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 194. MEDICAL RADIOLOGICAL TECHNOLOGY

SUBCHAPTER A. CERTIFICATE HOLDERS, NON-CERTIFIED TECHNICIANS, AND OTHER AUTHORIZED INDIVIDUALS OR ENTITIES

22 TAC §§194.2, 194.6, 194.7, 194.10, 194.21, 194.34

The Texas Medical Board (Board) adopts amendments to Subchapter A, Certificate Holders, Non-Certified Technicians, and Other Authorized Individuals or Entities regarding §194.2, concerning Definitions, §194.6, concerning Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician Registry, §194.7, concerning Biennial Renewal of Certificate or Placement on the Board's Non-Certified Technician Registry, §194.10, concerning Retired Certificate or NCT Registration, §194.21, concerning Scope of Practice, and new §194.34, Exemption from Licensure for Certain Military Spouses.

The amendments to §§194.2, 194.6, 194.7, 194.10, 194.21, and new §194.34, are being adopted with changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4825), incorporating stakeholder feedback. The adopted rules will be republished.

The adopted amendment to §194.2, relating to Definitions, is amended with new definitions for "Certification Board for Radiology Practitioner Assistants", "radiologist", and "radiologist assistant." The amended section is adopted with changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4825), amending the definitions for "podiatrist" so that the licensing entity is accurately reflected to be the Texas Department of Licensing and Regulation, and podiatric medical degree accurately described.

The adopted amendment to §194.6, relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry, is adopted with non-substantive changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4825), so that individuals performing radiologic procedures under the supervision of a podiatrist are not required to register with the Texas Board of Medical Radiologic Technology (MRT Board). The language is added in accordance with HB 2847 (86th Legislature), which transferred the authority for registering such individuals from the MRT Board to the Texas Department of Licensure and Regulation. In addition, the adopted new language establishes eligibility requirements that must be met in order for an applicant to obtain a temporary or regular radiologist assistant certificate, pursuant to HB 1504 (86th Legislature). Other amendments delete references to the NCT "general" registry, a distinction no longer required after the passage of SB 674 (85th Regular Session), which eliminated the NCT secondary registry with the Texas Medical Board. Finally, adopted amendments represent changes necessitated by the new language to maintain consistency and clarity throughout the section.

The adopted amendments to §194.7, relating to Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally, contain new language establishing continuing education requirements that must be met in order for a radiologist assistant certificate holder to renew a certificate, in accordance with HB 1504.

The adopted amendments are further added to clarify that certificate holders and NCTs are required to "complete activities" meeting the RCEEM or RCEEM+ designation, as opposed to "attendance and participation in formal activities", reflecting that web-based courses are formats that comply with the continuing education requirements.

The adopted amendments are made to language mandating the denial of an application for renewal of a certificate or NCT regis-

tration upon notice of a Texas Guaranteed Student Loan Corporation guaranteed student loan is proposed for repeal, in accordance with SB 37 (86th Legislature).

Other adopted amendments delete references to the NCT "general" registry, a distinction no longer required after the passage of SB 674 (85th Regular Session), which eliminated the NCT secondary registry with the Texas Medical Board. Remaining amendments represent changes necessitated by the new language related to radiologist assistant certificates, to maintain consistency and clarity throughout the section.

The adopted amendment to §194.10, relating to Retired Certificate or NCT General Registration Permit, is amended so that references to the NCT "general" registry are eliminated throughout, a distinction no longer required after the passage of SB 674 (85th Regular Session). Language is added with a reference to the Certification Board for Radiology Practitioner Assistants (CBRPA) related to possible certification renewal requirements for a radiologist assistant with a retired certificate, who desires to return to active practice and who had initially obtained eligibility for a Texas certificate through CBRPA national certification. The proposed language reflects the new radiologist assistant eligibility requirements established by HB 1504 (86th Legislature).

The adopted amendment to §194.21, relating to Scope of Practice, includes proposed changes to more precisely outline the allowed scope of practice for an individual holding a limited certificate.

New §194.34, Exemption from Licensure for Certain Military Spouses (regarding Medical Radiologic Technologists), allows qualified military spouses to practice medical radiological technology without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas. The adopted new rule is mandated by the passage of SB 1200 (86th Legislature).

The Board has determined that the public benefit anticipated as a result of enforcing this adoption will be to have rules implementing and defining the requirements set forth by HB 1504, HB 2847, and SB 37 (86th Legislature). Further the adopted amendments will reflect compliance with SB 674 (85th Regular Session), which eliminated the NCT secondary registry. The public will also benefit from having rules that contain language accurately reflecting current laws and board processes.

One written comment was received from the Texas Department of Licensing and Regulation, recommending changes to §194.2 and §194.6 as published in the September 6, 2019, issue to reflect HB 2847's passage. The Board agreed with the recommended changes and adopted the amendments as outlined in the above summary. No one appeared in person to testify regarding the rules at the public hearing on October 18, 2019.

The amendments and new rule are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act. The amendments and new rule are also adopted under the authority of HB 1504 (86th Legislature), SB 37 (86th Legislature), HB 2847 (86th Legislature), SB 37 (86th Legislature), and SB 674 (85th R.S.).

§194.2. Definitions.

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

(1) ABHES--Accrediting Bureau of Health Education Schools.

(2) Act--The Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(3) Active duty--A person who is currently serving as full-time military service member in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(4) Agency--The divisions, departments, and employees of the board, Texas Medical Board, Texas Physician Assistant Board, Texas State Board of Acupuncture Examiners, Medical Physicist Licensure Advisory Committee; Perfusionist Licensure Advisory Committee; and Texas Board of Respiratory Care.

(5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(6) Applicant--A person who files an application with the board for a certificate, including a temporary certificate, general, limited, or a provisional certificate; or a person or program who files an application with the board for approval to act as an instructor or educational program.

(7) Armed forces of the United States--Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(8) ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.

(9) ASRT--The American Society of Radiologic Technologists and its predecessor or successor organizations.

(10) Board--The Texas Board of Medical Radiologic Technology.

(11) Cardiovascular (CV)--Limited to radiologic procedures involving the use of contrast media and or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(12) CBRPA--Certification Board for Radiology Practitioner Assistants.

(13) Certificate--A medical radiologic technologist certificate, general, limited or provisional, issued by the board.

(14) Chiropractor--A person who is licensed by the Texas Board of Chiropractic Examiners as a doctor of chiropractic.

(15) Dentist--A person who is licensed by the Texas State Board of Dental Examiners as a doctor of dentistry.

(16) Direct supervision--Supervision and control by a medical radiologic technologist or a practitioner who:

(A) assumes legal liability for a student employed to perform a radiologic procedure and enrolled in a program that meets the requirements adopted under Texas Occupations Code Section 601.052; and

(B) is physically present during the performance of the radiologic procedure to provide consultation or direct the action of the student.

(17) Education program--Clinical training or any other program offered by an organization approved by the advisory board that:

(A) has a specified objective;

(B) includes planned activities for participants; and

(C) uses an approved method for measuring the progress of participants.

(18) Executive director--The executive director of the Agency or the authorized designee of the executive director.

(19) Federally qualified health center (FQHC)--A health center as defined by 42 United States Code, §1396d(L)(2)(B).

(20) Fluorography--Hard copy of a fluoroscopic image; also known as spot films.

(21) Fluoroscopy--The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

(22) General certification--An authorization to perform radiologic procedures.

(23) Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Medical Radiologic Technologist Certification Act, §§601.302-.303, Texas Occupations Code Annotated.

(24) Hospital--A facility that:

(A) is:

(i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by the state; or

(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

(25) Instructor--An individual approved by the board to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

(26) JRCCVT--The Joint Review Committee on Education in Cardiovascular Technology.

(27) JRCERT--The Joint Review Committee on Education in Radiologic Technology.

(28) JRCNMT--The Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

(29) Limited certification--An authorization to perform radiologic procedures that are limited to specific parts of the human body.

(30) Limited medical radiologic technologist (LMRT)--A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for a medical purpose. The limited categories are the skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular. The term does not include a practitioner.

(31) Medical Board--The Texas Medical Board.

(32) Medical radiologic technologist (MRT)--A person who holds a general certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to other persons for medical purpose. The term does not include a practitioner.

(33) Military service member--A person who is on active duty.

(34) Military spouse--A person who is married to a military service member.

(35) Military veteran--A person who served on active duty and who was discharged or released from active duty.

(36) Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

(37) NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(38) Non-certified technician (NCT)--A person who has completed a training program approved by the board and who is registered with the board under this chapter. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

(39) Open Meetings Act--Texas Government Code Annotated, Chapter 551 as amended.

(40) Party--The board and each person named or admitted as a party in a hearing before the State Office of Administrative Hearings.

(41) Pediatric--Pertaining to radiologic procedures performed on a person who is between the age range of fetus to age 18 or as otherwise defined by Texas law, when the growth and developmental processes are generally complete. These rules do not prohibit a practitioner from taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

(42) Physician--A person licensed by the Texas Medical Board as a doctor of medicine or osteopathy.

(43) Physician assistant--A person licensed by the Texas Physician Assistant Board to practice as a physician assistant.

(44) Podiatrist--A person licensed by the Texas State Board of Podiatric Medical Examiners as a doctor of podiatry.

(45) Practitioner--A chiropractor, dentist, physician, or podiatrist who prescribes radiologic procedures for other persons.

(46) Presiding Officer--The person designated by the Governor to serve as the presiding officer of the board.

(47) Provisional medical radiologic technologist (PMRT)--A person who holds a provisional certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for a medical purpose. The authorization to perform radiologic procedures under the provisional certificate shall not exceed 180 days from date of the certificate's issuance. The term does not include a practitioner.

(48) Radiation--Ionizing radiation:

(A) in amounts beyond normal background levels; and

(B) from a source such as a medical or dental radiologic procedure.

(49) Radiologic procedure--A procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that:

(A) is intended for use in:

(i) the diagnosis of disease or other medical or dental conditions in humans; or

(ii) the cure, mitigation, treatment, or prevention of disease in humans; and

(B) achieves its intended purpose through the emission of ionizing radiation.

(50) Radiologic technology--The administration of radiation to a person for a medical purpose.

(51) Radiologist--a physician specializing in radiology certified by or board-eligible for the American Board of Radiology, the American Osteopathic Board of Radiology, the Royal College of Radiologists, or the Royal College of Physicians and Surgeons of Canada.

(52) Radiologist assistant (RA)--an advanced-level medical radiologic technologist who is certified as:

(A) a registered radiologist assistant by the American Registry of Radiologic Technologists; or

(B) a radiology practitioner assistant by the Certification Board for Radiology Practitioner Assistants.

(53) Registered nurse--A person licensed by the Texas Board of Nursing to practice professional nursing.

(54) Registry--A list of names and other identifying information of non-certified technicians registered with the board.

(55) SACS--The Southern Association of Colleges and Schools, Commission on Colleges.

(56) Sponsoring institution--A hospital, educational, other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(57) State--Any state, territory, or insular possession of the United States and the District of Columbia.

(58) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(59) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(60) Temporary certification, general or limited--An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(61) X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, the types of X-ray equipment are as follows:

(A) portable X-ray equipment--X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable X-ray equipment may also include equipment designed to be hand-carried;

(B) stationary X-ray equipment--X-ray equipment that is installed in a fixed location; or

(C) mobile stationary X-ray equipment--X-ray equipment that is permanently affixed to a motor vehicle or trailer with appropriate shielding.

§194.6. Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician Registry.

(a) Except as otherwise provided in this chapter, an individual must be certified or hold a temporary certificate as a radiologist assistant, medical radiologic technologist or limited radiologic technologist, or be placed by the board on the registry for non-certified technicians before the individual may perform a radiologic procedure.

(b) Types of Certificates. The board shall issue general certificates, limited certificates, temporary certificates (general or limited), or provisional certificates.

(c) General Requirements.

(1) Except as otherwise required in this section, an applicant for temporary or regular certification as an RA, MRT, or LMRT, or registration as an NCT must:

(A) graduate from high school or its equivalent as determined by the Texas Education Agency;

(B) attain at least 18 years of age;

(C) submit an application on a form prescribed by the board;

(D) pay the required application fee, as set forth under Chapter 175 of this title (relating to Fees and Penalties);

(E) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation;

(F) certify that the applicant is mentally and physically able to perform radiologic procedures;

(G) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked or suspended;

(H) not have proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to perform radiologic procedures in the state, a Canadian province, or the uniformed service of the United States in which it was issued;

(I) not have pending any prosecution against applicant in any state, federal, or international court for any offense that under the laws of this state is a felony, or an offense that is a misdemeanor of moral turpitude;

(J) be of good professional character as defined under §194.2 of this title (relating to Definitions);

(K) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications; and

(L) meet any other requirement established by rules adopted by the board.

(2) The board retains the discretion to consider the nature of any final disciplinary action, other than suspension or revocation, when determining whether to issue the certificate or other authorization.

(d) Additional Requirements for Specific Certificate Types or Placement on the Board's Non-Certified Technician Registry.

(1) Radiologist Assistant Certificate. In addition to meeting requirements under subsection (c) of this section, an applicant must pass the jurisprudence examination in accordance with subsection (e) of this section, and meet the following requirements:

(A) possess current national certification and registration as a radiologist assistant by ARRT;

(B) possess current national certification as a radiology practitioner assistant by CBRPA; or

(C) be currently licensed, certified, or registered as a radiologist assistant in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas radiologist assistant certification.

(2) General Medical Radiologic Technologist Certificate. In addition to meeting requirements under subsection (c) of this section, to qualify for a general certificate, an applicant must pass the jurisprudence examination in accordance with subsection (e) of this section, and meet at least one of the following requirements:

(A) possession of current national certification as a registered technologist, radiographer, radiation therapist, or nuclear medicine technologist by ARRT;

(B) successful completion of the ARRT's examination in radiography, radiation therapy, or nuclear medicine technology;

(C) possession of current national certification as a nuclear medicine technologist by the NMTCB;

(D) successful completion of the NMTCB's examination in nuclear medicine technology; or

(E) current licensure, certification, or registration as a medical radiologic technologist in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas general certification.

(3) Limited Medical Radiologic Technologist Certificate. In addition to meeting requirements under subsection (c) of this section, to qualify for a limited certificate, an applicant must meet at least one of the following requirements:

(A) the successful completion of a limited program as set out in §194.12 of this title (relating to Standards for the Approval of Certificate Program Curricula and Instructors) and the successful completion of the jurisprudence examination and appropriate limited examination in accordance with subsection (e) of this section;

(B) current licensure, certification, or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America whose requirements are more stringent than or substantially equivalent to the requirements for Texas limited certification and successful completion of the jurisprudence examination in accordance with subsection (e) of this section; or

(C) current general certification as an MRT issued by the board. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested.

(4) Temporary Radiologist Assistant Certificate.

(A) The board may issue a temporary radiologist assistant certificate to an applicant who, in addition to meeting the requirements of subsection (c) of this section:

(i) has successfully completed a course of study in an ARRT or CBRPA-recognized radiologist assistant program;

(ii) is approved by ARRT or CBRPA as examination eligible;

(iii) meets all the qualifications for a radiologist certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the radiologist certificate to be issued; or

(iv) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary radiologist assistant certificate to remedy active practice issues, the applicant must:

(I) be supervised by a radiologist (as defined under §194.2 of this title) who:

(-a-) holds an active, unrestricted license in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the radiologist that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board according to rules adopted by the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary radiologist assistant certificate granted under this paragraph may be valid for not more than one year from the date issued. A temporary radiologist assistant certificate may be revoked at any time the board deems necessary.

(C) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(5) Temporary General Medical Radiologic Technologist Certificate.

(A) The board may issue a temporary general certificate to an applicant who, in addition to meeting the requirements of subsection (c) of this section:

(i) has successfully completed a course of study in radiography, radiation therapy, or nuclear medicine technology which is accredited by an agency which is recognized by:

(I) the Council for Higher Education Accreditation, including but not limited to: the Joint Committee on Education in Nuclear Medicine Technology (JRCNMT); or

(II) the United States Secretary of Education, including, but not limited to: the Joint Review Committee on Education in Radiologic Technology (JRCERT), Accrediting Bureau of Health Education Schools, or the Southern Association of Colleges and Schools, Commission on Colleges;

(ii) is approved by the ARRT as examination eligible;

(iii) is approved by the NMTCB as examination eligible;

(iv) has completed education, training and clinical experience which is substantially equivalent to that of an accredited educational program as listed in clause (i) of this subparagraph;

(v) meets all the qualifications for a general certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the general certificate to be issued; or

(vi) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary general certificate to remedy active practice issues, the applicant must:

(I) be supervised by a general certificate holder or practitioner (as defined under §194.2 of this title) who:

(-a-) holds an active, unrestricted license or certificate in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the general certificate holder or practitioner that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board according to rules adopted by the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary general certificate granted under this paragraph may be valid for not more than one year from the date issued. A temporary general certificate may be revoked at any time the board deems necessary.

(C) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(6) Temporary Limited Medical Radiologic Technologist Certificate.

(A) The board may issue a temporary limited certificate to an applicant who, in addition to meeting requirements under subsection (c) of this section:

(i) has successfully completed a limited certificate program in the categories of skull, chest, spine, abdomen or extremities, approved in accordance with §194.12 of this title ;

(ii) meets all the qualifications for a limited certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the limited certificate to be issued; or

(iii) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary limited certificate to remedy active practice issues, the applicant must:

(I) be supervised by a general certificate holder or practitioner ("practitioner" is defined under §194.2 of this title) who:

(-a-) holds an active, unrestricted license or certificate in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the general certificate holder or practitioner that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary limited certificate granted based upon successful completion of approved programs under subparagraph (A)(i) of this paragraph may not be valid for more than six months from the date issued, unless the applicant has met all qualifications for the limited certificate, and is on the agenda for the next scheduled meeting of the board for the limited certificate to be issued.

(C) Temporary limited certificates granted for the purpose of remedying active practice deficiencies under subparagraph (A)(iii) of this paragraph may not be valid for more than 12 months from the date of issue.

(D) A temporary limited certificate may be revoked at any time the board deems necessary.

(E) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(7) Provisional Medical Radiologic Technologist Certificate.

(A) To qualify for a provisional general certificate, an applicant must:

(i) be currently licensed or certified in another jurisdiction;

(ii) have been licensed or certified in good standing as a MRT for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(iii) pass a national or other examination recognized by the board relating to the practice of radiologic technology;

(iv) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; and

(v) be sponsored by a medical radiologic technologist certified by the board under the Act with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(B) A provisional certificate is valid until the date the board approves or denies the provisional certificate holder's application for a certificate.

(C) The board must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(8) Placement on the Non-Certified Technician Registry.

(A) Registration Required. In accordance with §601.202 of the Act, a person who intentionally uses radiologic technology, other than a certificate holder, physician assistant, registered nurse, or person performing procedures under the supervision

of a dentist, must register with the board prior to performing any procedures.

(B) In addition to meeting the requirements under subsection (c) of this section, to qualify for placement on the board's NCT Registry, an applicant must successfully complete a training program approved by the board in accordance with §194.13 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) and pass the jurisprudence examination in accordance with subsection (e) of this section.

(e) Examinations Required.

(1) Jurisprudence examination. An applicant must pass the jurisprudence examination ("JP exam"), which shall be conducted on the laws, rules, or regulations applicable to the practice of medical radiologic technology in this state. The JP exam shall be developed and administered as follows:

(A) The staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination.

(B) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other documents or devices into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(C) Irregularities during an examination, such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(D) Applicants must pass the JP exam with a score of 75 or better.

(E) A person who has passed the JP exam shall not be required to retake the exam for re-licensure, except as a specific requirement of the board as part of an order.

(2) Additional Examinations Required for Certification.

(A) Radiologist Assistant Certificate. The following examinations are accepted for a radiologist assistant application:

(i) the ARRT Registered Radiologist Assistant examination; or

(ii) the CBRPA Radiology Practitioner Assistant examination.

(B) General Certificate. The following examinations are accepted for a general certificate application:

(i) NMTCB examination in nuclear medicine technology; or

(ii) The appropriate ARRT examination in radiography, nuclear medicine technology, or radiation therapy. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the applicant for a general certificate.

(C) Limited Certificate.

(i) The following examinations are accepted for a limited certificate application: Successful completion of the appropriate examination, including the core knowledge component, as follows:

(I) skull--the ARRT examination for the limited scope of practice in radiography (skull);

(II) chest--the ARRT examination for the limited scope of practice in radiography (chest);

(III) spine--the ARRT examination for the limited scope of practice in radiography (spine);

(IV) extremities--the ARRT examination for the limited scope of practice in radiography (extremities);

(V) chiropractic--the ARRT examinations for the limited scope of practice in radiography (spine and extremities);

(VI) podiatric--the ARRT examination for the limited scope of practice in radiography (podiatry); or

(VII) cardiovascular--the Cardiovascular Credentialing International invasive registry examination.

(ii) Limited Certification Exam Attempt Authorization.

(I) Individuals enrolled or who have completed an approved limited medical radiologic program, as set forth under §194.12 of this title, must apply to the board and obtain authorization in order to attempt passage of accepted examination(s) set forth under subparagraph (B) of this paragraph.

(II) In order to obtain authorization to attempt passage of the exam, an individual must provide the following documentation:

(-a-) Evidence of current enrollment in an approved limited program as set forth by §194.12 of this title and an attestation stating that the individual has completed the education components necessary for qualifying the individual to pass the appropriate limited scope examination, signed by the program director or registrar; or

(-b-) a copy of a certificate of completion or official transcript showing completion of an approved limited program, as set out in §194.12 of this title.

(III) Approval to attempt passage of the limited scope examination is not authorization to perform limited medical radiologic technology procedures. An individual must apply for and be granted a temporary or limited or general certificate prior to performing limited medical radiologic technology procedures or meet an exception to such certification requirements provided for under the Act.

(iii) Individuals approved to sit for the limited certification examination will be allowed three attempts to pass the examination within one year from the date of the initial authorization granted by the board. Individuals who fail to pass within the required number of attempts or one-year-period will not be eligible for additional attempts, except as provided in clause (iv) of this subparagraph.

(iv) Notwithstanding clause (iii) of this subparagraph, an individual who fails to pass the examination within the required number of attempts or within the one-year-period may obtain approval for one additional attempt, if the individual successfully completes a review course of no less than 60 hours of continuing education in length, offered by an approved limited program under §194.12 of this title. The additional attempt must be made no later than one year from the date of the board's approval granted. Those failing to pass the examination within the additional one-year period allowed shall no longer be eligible for additional attempts at passage, and shall only be eligible for state examination attempts for the purpose of state limited certification by again meeting the requirements for approval

of exam attempt authorization set forth under clause (ii)(II) of this subparagraph.

(3) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by the board or organization administering the examination(s).

(4) Standards of acceptable performance. The scaled score to determine pass or fail performance shall be 75. For the cardiovascular limited certificate, the Cardiovascular Credentialing International examinations (Cardiovascular Science Examination and/or the Invasive Registry Examination as required to obtain the Registered Cardiovascular Invasive Specialist RCIS credential) the scaled score to determine pass or fail performance shall be 70.

(5) Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the board or organization administering the examinations prescribed by the board.

(6) Examination Results.

(A) Notification to examinees. Results of an examination prescribed by the board but administered under the auspices of another organization will be communicated to the applicant by the board, unless the contract between the board and that organization provides otherwise.

(B) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the board.

(C) Deadlines. The board shall notify each examinee of the examination results within 14 days of the date the board receives the results. If notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day. The board may require a testing service to notify a person of the results of the person's examination.

(7) Refunds. Examination fee refunds will be in accordance with policies and procedures of the board or the organization prescribed by the board to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

(f) Documentation. The following documentation shall be submitted as a part of the certification application process:

(1) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) ARRT, CBRPA, or NMTCB-Certified or Considered Exam Eligible. For applicants certified by ARRT, CBRPA, or NMTCB or considered examination eligible by such organizations, the applicant must provide a letter of verification of current certification or examination eligibility sent directly from ARRT, CBRPA or NMTCB, as applicable.

(3) Training Program Certification. For applicants who are graduates of a program accepted by the board for certification under §194.12 or §194.13 of this title, each applicant must have a certificate of successful completion of an educational program submitted directly from a program accepted by the board for certification, on a form provided by the board.

(4) Examination Scores. Each applicant for certification must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for certification.

(5) Verification from other states. On request of board staff, an applicant must have any state, in which he or she has ever been registered, certified, or licensed as any type of healthcare provider regardless of the current status of the registration, certification, or license, submit to the board a letter verifying the status of the registration, certification, or license and a description of any sanctions or pending disciplinary matters. The information must be sent directly to the board from the state licensing entities.

(6) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested by the applicant to arresting authority, and that authority must submit copies directly to the board.

(7) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance, as applicable;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter shall be accompanied by supporting documentation including court records if applicable. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) compose and provide a statement explaining the circumstances pertaining to patient care in defense of the allegations.

(8) Additional Documentation. An applicant must submit additional documentation as is deemed necessary to facilitate the investigation of any application for certification.

(g) Review and Recommendations by the Executive Director.

(1) The executive director or designee shall review applications for certification or other authorization and may determine whether an applicant is eligible for certification or other authorization, or refer an application to a committee of the board for review.

(2) If the executive director or designee determines that the applicant clearly meets all requirements, the executive director or designee, may issue a certificate or other authorization to the applicant, to be effective on the date issued without formal board approval, as authorized by §601.052 of the Act.

(3) If the executive director determines that the applicant does not clearly meet all certification or other authorization requirements as prescribed by the Act and this chapter, a certificate or other authorization may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §§601.052 of the Act and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility). Not later than the 20th day after the date the applicant receives notice of the executive director's determination the applicant shall:

(A) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(B) withdraw his or her application.

(C) If an applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(4) To promote the expeditious resolution of any matter concerning an application for certification or other authorization, the executive director, with the approval of the board, may recommend that an applicant be eligible for a certificate or other authorization under certain terms and conditions and present a proposed agreed order or remedial plan to the applicant. Not later than the 20th day after the date the applicant receives notice of the executive director's recommendation for an agreed order or remedial plan, the applicant shall do one of the following:

(A) sign the order or remedial plan and the order/remedial plan shall be presented to the board for consideration and acceptance without initiating a Disciplinary Licensure Investigation (as defined in §187.13 of this title) or appearing before a committee of the board concerning issues relating to licensure eligibility; or

(B) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(C) withdraw his or her application.

(D) If an applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(h) Committee Referrals. An applicant who has either requested to appear before the licensure committee of the board or has elected to be referred to the licensure committee of the board due to a determination of ineligibility by the executive director in accordance with section, in lieu of withdrawing the application for certification, may be subject to a Disciplinary Licensure Investigation as defined in §187.13 of this title. Review of the executive director's determination by a committee of the board shall be conducted in accordance with §187.13 of this title. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act. The board may disclose such reports to appropriate licensing authorities in other states.

(i) All applicants must provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced, been a student at an acceptable approved program under §194.12 or §194.13 of this title or been on the active teaching faculty of an acceptable approved program under §194.12 or §194.13 of this title, within one of the last two years preceding receipt of an application for certification or registration. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(j) Applicants who are unable to demonstrate active practice on a full time basis may, in the discretion of the board, be eligible for an unrestricted or restricted certificate or placement on the non-certified technician registry, subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (5) of this subsection:

(1) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools (SACS), or by agencies or organizations such as JRCERT, JRCNMT, Joint Review Committee on Education in Cardiovascular Technology (JTCCVT), the Council on Chiropractic Education (CCE), ABHES, or the American Society of Radiologic Technologists (ASRT);

(2) current certification by ARRT, CBRPA, or NMTCB;

(3) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(4) remedial education; and

(5) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(k) Applicants for certification, NCT registration, or other authorization:

(1) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for certification or registration will require submission of a new application and inclusion of the current fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for certification or registration and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(2) who in any way falsify the application may be required to appear before the board;

(3) on whom adverse information is received by the board may be required to appear before the board;

(4) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) must have the application complete in every detail at least 20 days prior to the board meeting in which they are considered for certification. Applicants may qualify for a temporary certificate prior to being considered by the board for certification, contingent upon meeting the minimum requirements for a temporary certificate under this section;

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.

(l) Alternative Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain requirements related to an application for certification or placement on the board's Non-Certified Technician Registry. Unless specifically allowed in this subsection, an applicant must meet the requirements for certification as a medical radiologic technologist, limited medical radiologic technologist, or placement on the board's Non-Certified Technician Registry as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) hold an active unrestricted certificate, license, or registration as a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician in another state, the District of Columbia, or a territory of the United States that has requirements that are substantially equivalent to the requirements for a Texas certificate or placement on the NCT Registry; or

(B) within the five years preceding the application date held a certificate to practice radiologic technology in this state.

(3) The executive director may waive any prerequisite to obtaining a certificate or other authorization for an applicant described in paragraph (1) of this subsection after reviewing the applicant's credentials.

(4) Applications for certification or other authorization from applicants qualifying under paragraphs (1) and (2) of this subsection shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the certificate.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under paragraphs (1) and (2) of this subsection:

(A) in demonstrating compliance with subsection (i) of this section must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced, been a student at an approved program, or has been on the active teaching faculty of an approved program, within one of the last three years preceding receipt of an application for certification;

(B) notwithstanding the one-year expiration in subsection (k)(1) of this section, are allowed an additional six months to complete the application prior to it becoming inactive; and

(C) notwithstanding the 20-day deadline in subsection (k)(6) of this section, may be considered for certification up to five days prior to the board meeting.

(m) Applicants with Military Experience.

(1) The board shall, with respect to an applicant who is a military service member or military veteran as defined in §194.2 of this title, credit verified military service, training, or education toward the requirements, other than an examination requirement, for a certificate or other authorization issued by the board.

(2) This section does not apply to an applicant who:

(A) has had a license, certificate, or registration to practice radiologic technology suspended or revoked by this state, another state, a Canadian province, or another country;

(B) holds a license, certificate, or registration to practice radiologic technology issued by another state, Canadian province, or another country that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

(n) Re-Application for Certification or other Authorization Prohibited. A person who has been determined ineligible for a certificate or placement on the NCT Registry by the Licensure Committee may not reapply for a certificate or placement on the NCT Registry prior to the expiration of one year from the date of the board's ratification of the Licensure Committee's determination of ineligibility and denial.

(o) Request for Criminal History Evaluation Letter.

(1) In accordance with Texas Occupations Code, §53.102, prior to applying for certification or other authorization, an individual may request that board staff review the person's criminal history to determine if the person is potentially ineligible for certification or other authorization based solely on the person's criminal background.

(2) Requestors must submit their requests in writing along with appropriate fees as provided in §175.1 of this title (relating to Application and Administrative Fees).

(3) The board may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.

(4) The board shall provide criminal history evaluation letters that include the basis for potential ineligibility, if grounds for ineligibility exist to all requestors no later than the 90th day after the board receives all required documentation to allow the board to respond to a request.

(5) If a requestor does not provide all requested documentation within one year of submitting the original request, the request will be considered as withdrawn.

(6) All evaluations letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the board, the board may invalidate the criminal history evaluation letter.

(7) An individual shall be permitted to apply for certification or other authorization, regardless of the board's determination in a criminal history evaluation letter.

§194.7. Biennial Renewal of Certificate or Placement on the Board's Non-Certified Technician Registry.

(a) Temporary Certificates.

(1) A temporary certificate shall expire one year from the date of issue. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(2) A temporary certificate is not subject to a renewal or extension for any reason.

(3) Persons who hold temporary certificates, either radiologist assistant, general, or limited, are not subject to continuing education requirements set forth under subsection (c) of this section.

(b) Biennial Registration and Fee Required.

(1) Certificate holders and NCTs registered under the Act shall renew authorization to practice biennially and pay a fee. Upon notification from the board, unexpired authorization may be renewed by submitting the required form and documents and by paying the re-

quired renewal fee to the board on or before the expiration date of the authorization.

(2) The fee shall accompany the required form which legibly sets forth the certificate or NCT registration holder's name, mailing address, business address, and other necessary information prescribed by the board. The certificate or NCT registration holder must include with the required forms and fee documentation of continuing education completed during the previous two years to the date of renewal ("biennial renewal period").

(c) Continuing education requirements.

(1) Generally.

(A) RA. As a prerequisite to the biennial renewal of a radiologist assistant certificate, a minimum of 24 hours of continuing education hours must be completed during each biennial renewal period. The hours must be in activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period.

(B) MRT. As a prerequisite to the biennial renewal of an MRT certificate, a minimum of 24 hours of continuing education hours must be completed during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least 12 hours of the required number of hours must be satisfied by completing activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM or RCEEM+ during the biennial renewal period.

(ii) The remaining 12 credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(C) LMRT. As a prerequisite to the biennial renewal of a limited certificate, a minimum of 18 hours of continuing education acceptable to the board must be completed during each biennial renewal period. The hours completed must be in the topics of general radiation health and safety or related to the categories of limited certificate held. The continuing education must be completed in the following categories:

(i) At least nine hours of the required number of hours must be satisfied by completing activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM or RCEEM+ during the biennial renewal period.

(ii) The remaining nine credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(D) An RA, MRT, or LMRT who also holds a current Texas license, registration, or certification in another health profession may satisfy the continuing education requirement for renewal of a certificate with hours counted toward renewal of the other license, registration, or certification, provided such hours meet all the requirements of this subsection.

(E) An RA or MRT who holds a current and active annual registration or credential card issued by ARRT indicating that the certificate holder is in good standing and not on probation satisfies the continuing education requirement for renewal of a certificate, provided the hours accepted by ARRT were completed during the certificate holder's biennial renewal period and meet or exceed the hour the requirements set out in this subsection. The board must be able to verify the status of the card presented by the certificate holder electronically or by other means acceptable to the board. The board may review documentation of the continuing education activities in accordance with paragraph (5) of this subsection.

(F) NCTs. As a prerequisite to the biennial renewal of a placement on the NCT registry, the individual must complete a minimum of 12 hours of continuing education during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least six hours of the required number of hours must be satisfied by completion of activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM or RCEEM+ during the biennial renewal period.

(ii) The remaining six credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through independent self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(2) Content Requirements.

(A) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure technique; emerging imaging modality study; patient care associated with a radiologic procedure; radio pharmaceutics, pharmaceutics, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

(B) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are related to the use and application of non-ionizing forms of radiation for medical purposes.

(C) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purpose of the section, indirectly related topics include, but are not limited to, patient care, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(3) Alternative Continuing Education Accepted by the Board. The additional activities for which continuing education credit will be awarded are as follows:

(A) successful completion of an entry-level or advanced-level examination previously passed in the same discipline of radiologic technology administered by or for the ARRT during the renewal period. The examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes. Such successful completion shall be limited to not more than one-half of the continuing education hours required;

(B) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(i) three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(ii) six hours credit during a renewal period for an advanced cardiac life support course;

(C) attendance and participation in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(D) teaching in a program accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools; or an institution accredited by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, ASRT, professional organizations or associations, or a federal, state, or local governmental entity, with a limit of one contact hour of credit for each hour of instruction per topic item once during the continuing education reporting period for up to a total of 6 hours. No credit shall be given for teaching that is required as part of one's employment. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(E) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of six contact hours of credit during a continuing education period. Upon audit by the board, the certificate holder must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(4) Reporting Requirements. A certificate holder or NCT must report on the biennial renewal application form if she or he has completed the required continuing education during the previous renewal period.

(A) A certificate holder or NCT may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements.

(B) For RAs or MRTs, a maximum of 48 total excess credit hours meeting the requirements under this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(C) For LMRTs, a maximum of 24 hours meeting the requirements of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(D) For NCTS, a maximum of 12 total excess credit hours meeting the requirements of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(5) Exemptions.

(A) A certificate holder or NCT may request in writing an exemption for the following reasons, subject to the approval of the certification committee of the board:

(i) catastrophic illness;

(ii) military service of longer than one year's duration outside the United States;

(iii) residence of longer than one year's duration outside the United States; or

(iv) good cause shown on written application of the certificate holder that gives satisfactory evidence to the board that the certificate holder is unable to comply with the requirement for continuing medical education.

(B) An exception under paragraph (5) of this subsection may not exceed one registration period, but may be renewed biennially, subject to the approval of the board.

(6) A certificate holder or NCT who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements.

(7) This subsection does not prevent the board from taking disciplinary action with respect to a NCT or certificate holder or an applicant for such authorization by requiring additional hours of continuing education or of specific course subjects.

(8) The board may require written verification of continuing education credits from any certificate holder or NCT within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(9) Unless exempted under the terms of this subsection, a certificate holder or NCT's failure to obtain and timely report required hours of continuing education as required and provided for in this subsection shall result in the nonrenewal of the authorization to practice until such time as the certificate holder or NCT obtains and reports the required continuing education hours; however, the executive director of the Medical board may issue a temporary certificate or NCT registration numbered so as to correspond to the nonrenewed certificate or NCT registration. Such a temporary authorization to practice shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary authorization to practice issued pursuant to this subsection may be issued to allow the opportunity to correct any deficiency so as not to require termination of practice.

(10) Determination of contact hour credits. A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(d) Criminal History Requirement for Registration Renewal.

(1) An applicant must submit a complete and legible set of fingerprints for purposes of performing a criminal history check.

(2) The board may not renew the certificate or NCT registration of a person who does not comply with the requirement of paragraph (1) of this subsection.

(3) A certificate holder or NCT is not required to submit fingerprints under this section for the renewal of the certificate or registration if the holder has previously submitted fingerprints for the initial issuance or prior renewal of a certificate or NCT registration.

(e) Report of Impairment on Registration Form.

(1) A certificate holder or NCT who reports an impairment that affects his or her ability to actively practice shall be given written notice of the following:

(A) based on the individual's impairment, he or she may request:

(i) to be placed on retired status pursuant to §194.10 of this title (relating to Retired Certificate or NCT Registration);

(ii) to voluntarily surrender the certificate or NCT registration pursuant to §194.33 of this title (relating to Voluntary Relinquishment or Surrender of Certificate or Permit); or

(iii) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders); and

(B) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the board's investigation division for possible disciplinary action.

(2) The board shall provide written notice as described in paragraph (1) of this subsection within 30 days of receipt of the renewal application form indicating the impairment.

(f) The board shall deny an application for renewal of an authorization to practice upon notice of the certificate or NCT registration holder's default of child support payments, as provided under Chapter 232 of the Texas Family Code.

(g) The board shall deny an application for renewal of a certificate or NCT registration or take and/or impose other disciplinary action against such an individual who falsifies an affidavit or otherwise submits false information to obtain renewal of a certificate or NCT registration, pursuant to the Act, §601.302.

(h) If the renewal fee and completed application form are not received on or before the expiration date of the certificate or NCT registration, the fees set forth in Chapter 175 of this title (relating to Fees and Penalties) shall apply.

(i) Except as otherwise provided, the board shall not waive fees or penalties.

(j) The board shall stagger biennial renewal of a certificate or NCT registration proportionally on a periodic basis.

(k) Expired Biennial Renewal.

(1) Generally.

(A) If a certificate or NCT registration has been expired for less than one year, the certificate or NCT registration may be renewed by submitting to the board a completed renewal application, and the renewal and penalty fees, as set forth under Chapter 175 (relating to Fees and Penalties).

(B) If a certificate or NCT registration has been expired for one year or longer, the certificate or NCT registration will be automatically canceled, unless an investigation is pending, and the certificate or NCT registration may not be renewed.

(C) A person whose certificate or NCT registration has expired may not engage in activities that require a certificate or NCT registration until the authorization has been renewed. Performing activities requiring a certificate or NCT registration during the period in which the authority has expired has the same effect as, and is subject to all penalties of, practicing radiologic technology in violation of the Act.

(D) If a certificate or NCT registration has been expired for one year or longer, it is considered to have been canceled, unless an investigation is pending. A new certificate or NCT registration may be obtained by complying with the requirements and procedures for obtaining an original certificate or NCT registration.

(2) Renewal for technologists on active military duty with expired certificate or NCT registration. A holder of a certificate or NCT registration that has been expired for longer than a year may file a complete application for another certificate or NCT registration of the same type as that which expired.

(A) The application shall be on official board forms and be filed with required fees.

(B) An applicant shall be entitled to a certificate of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required.

(C) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified or registered as an NCT with the board.

(D) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

§194.10. Retired Certificate or NCT Registration.

(a) The registration fee shall not apply to retired certificate or NCT.

(b) To become exempt from the registration fee due to retirement, the individual:

(1) must not be under an investigation or order with the board or otherwise be restricted; and

(2) must request in writing on a form prescribed by the board for his or her certificate or NCT registration to be placed on official retired status.

(3) The following restrictions shall apply to a certificate or NCT registration placed under an official retired status:

(A) the certificate or NCT registration holder must not engage in clinical activities requiring a certificate or NCT registration in Texas or any state; and

(B) the certificate or permit holder's certificate or permit may not be endorsed to any other state.

(c) A retired certificate or NCT registration holder may return to active status by:

(1) applying to the board;

(2) paying an application fee equal to an application fee for a certificate or NCT registration holder;

(3) complying with the requirements for certificate or NCT registration renewal under the Act;

(4) providing current verifications from each state in which the certificate or NCT registration holder holds a license, certificate, permit, or registration, as applicable;

(5) providing current verifications of certification by ARRT, CBRPA, or NMTCB, as applicable; and

(6) complying with subsection (d) of this section.

(d) Licensure Committee or Executive Director Recommendations.

(1) The request of a certificate or NCT registration holder seeking a return to active status whose certificate or NCT registration has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to the following terms:

(A) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting organization such as SACS, or by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, or ASRT;

(B) current certification by ARRT, CBRPA, or NMTCB, as applicable;

(C) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(D) remedial education; and

(E) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(2) The request of a certificate or NCT registration holder seeking a return to active status whose certificate has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee of the board, for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to those options provided in paragraph (1)(A) - (E) of this subsection.

(e) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the certificate or NCT registration holder at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance and in writing by the executive director or the Licensure Committee, or other designee(s) determined by majority vote of the board.

(f) A retired certificate or NCT registration holder who has obtained an exemption from the renewal fee as provided for under this section, may be subject to disciplinary action under the Act, §601.302, based on unprofessional conduct if the certificate or NCT registration holder engages in activities requiring a certificate or NCT registration.

(g) A retired certificate or NCT registration holder who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act, §601.302, in addition to any civil or criminal actions provided for by state or federal law.

§194.21. Scope of Practice.

(a) NCTs.

(1) NCTs registered under §194.13 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) may not perform a dangerous or hazardous procedure as set out in §194.17 of this title (relating to Dangerous or Hazardous Procedures).

(2) All NCTs may only perform radiologic procedures under the supervision and direction of a practitioner, and must comply with all applicable statutes and rules under the laws governing the practice of the practitioner.

(b) LMRTs. Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, portable radiography, nuclear medicine, and/or radiation therapy procedures. However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and/or ionizing radiation for the purposes of imaging a disease or condition of the cardiovascular system. Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

§194.34. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice medical radiologic technology in Texas without obtaining a certificate or permit in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active medical radiologic certificate or permit in another state, territory, Canadian province, or country that:

(A) has licensing or certification requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice medical radiologic technology in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of medical radiologic technology in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's certificate or permit in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing or certification requirements in that jurisdiction are substantially equivalent to the requirements for certification in Texas.

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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Texas Medical Board
Effective date: November 10, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 305-7016

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §229.249, concerning Licensure Fees, and §229.427, concerning Licensure Fees. The amendments are adopted without changes to the proposed text as published in the August 2, 2019, issue of the *Texas Register* (44 TexReg 4026), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

DSHS adopted rules under the authority of Texas Health and Safety Code, Chapter 431, Subchapters I and N, relating to the licensing and regulation of wholesale distribution of nonprescription drugs and prescription drugs. Title 25, Texas Administrative Code, Chapter 229, Subchapters O and W relate to the licensing and regulation of manufacturers and distributors of nonprescription and prescription drugs. DSHS has legal authority to set fees in amounts that are reasonable and necessary and allow DSHS to recover biennial expenditures under Texas Health and Safety Code, §431.409(b). Currently, the fees for prescription drug manufacturers and nonprescription drug distributors who are manufacturers are divided into three levels. DSHS is proposing a new fee structure which expands the fee structure into five levels. This change aligns the nonprescription drug manufacturer fees with prescription drug manufacturer fees assessed by DSHS. Adding additional levels will result in a reduction of fees for some businesses with gross annual sales ranging from $200,000 to $19,999,999.99.

Under the authority of Texas Health and Safety Code, Chapter 431, the Food and Drug Safety program protects Texans from unnecessary morbidity and mortality through its regulation of people and entities that provide products and services that may pose a health threat if manufactured or used in an unapproved manner. The Drug Manufacturing program ensures that drugs are safe to consume and use, are properly labeled, and are not fraudulently presented. The Drug Manufacturing program issues two specific license types: nonprescription and prescription drug manufacturing. The objective of the rules is to create parity between small and large businesses and ensure smaller businesses are not paying a fee that is disproportionate to the amount of their sales.

COMMENTS

The 31-day comment period following publication of the proposed changes ended September 3, 2019. During this period, DSHS did not receive comments regarding the proposed rules.

SUBCHAPTER O. LICENSING OF WHOLESALE DISTRIBUTORS OF NONPRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §229.249

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, §431.241, which authorizes the Executive Commissioner of HHSC to adopt rules necessary for the implementation and enforcement of Chapter 431 by DSHS; Texas Health and Safety Code, §431.409(b) and §431.204(b) authorizes DSHS to collect fees for licenses; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The 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 October 25, 2019.

TRD-201903905
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: November 14, 2019
Proposal publication date: August 2, 2019
For further information, please call: (512) 834-6670

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SUBCHAPTER W. LICENSING OF WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §229.427

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, §431.241, which authorizes the Executive Commissioner of HHSC to adopt rules necessary for the implementation and enforcement of Chapter 431 by DSHS; Texas Health and Safety Code, §431.409(b) and §431.204(b) authorizes DSHS to collect fees for licenses; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The 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 October 25, 2019.

TRD-201903906
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: November 14, 2019
Proposal publication date: August 2, 2019
For further information, please call: (512) 834-6670

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER N. ADMINISTRATOR'S LICENSING

The Texas Health and Human Services Commission (HHSC) adopts new §745.8914 and §745.9030 without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4844), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Senate Bill (S.B.) 1200, 86th Legislature, Regular Session, 2019, which adds §55.0041 to the Texas Occupations Code to recognize certain out-of-state licenses for military spouses. The rules allow a military spouse to act as an administrator for a general residential operation, child-placing agency, or both without obtaining an administrator's license from Child Care Licensing (CCL), a division of HHSC. The rules require the military spouse to be currently licensed in good standing by another state that has licensing requirements substantially equivalent to the requirements for a CCL administrator's license in Texas. CCL regulates administrator's licenses and promulgates rules related to that regulation under Chapter 43, Texas Human Resources Code.

COMMENTS

The 31-day comment period ended October 7, 2019.

During this period, HHSC received comments regarding the proposed rules from four commenters, including Texas Foster Care and Adoption Services, New Life Refuge Ministries, one licensed child care administrator, and one individual. A summary of comments relating to §745.8914 and §745.9030 and HHSC's response follows.

Comment: Two commenters were generally opposed to a military spouse acting as an administrator without obtaining a license from CCL.

Response: HHSC disagrees with the comments. The rules are necessary for CCL's regulation of administrators under Chapter 43, Human Resources Code and to comply with S.B. 1200.

Comment: One commenter opposed the rules because the process would require additional paperwork in assuring the standards were the same, and if military spouses did have this right then all persons should have this right, not just military spouses.

Response: HHSC disagrees with the comment. Section 745.9030 clarifies that any additional paperwork will be completed at the front end of the process, and S.B. 1200 only applies to military spouses.

Comment: One commenter supported the rules because it was a good idea considering the current shortage of administrators.

Response: HHSC agrees with comment.

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

26 TAC §745.8914

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

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 October 24, 2019.

TRD-201903902
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 1, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 438-5559

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DIVISION 5. MILITARY MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

26 TAC §745.9030

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

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 October 24, 2019.

TRD-201903901
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 1, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 438-5559

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.5

The Texas Board of Occupational Therapy Examiners adopts new rule §364.5, concerning recognition of out-of-state license of military spouse, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4851). The rule will not be republished.

The new rule is adopted to add provisions to the Occupational Therapy Rules concerning the recognition of out-of-state licenses of military spouses as required by SB 1200 of the 86th Regular Legislative Session.

New rule §364.5 will add to the Occupational Therapy Rules provisions concerning the information a military spouse seeking recognition of the out-of-state license must submit to the Board and the conditions under which the military spouse may practice in the state once the individual has received confirmation from the Board that the military spouse is authorized to engage in the practice of occupational therapy. The adoption includes further provisions pursuant to SB 1200.

One comment was received from the Texas Occupational Therapy Association (TOTA) in support of the proposed new rule. TOTA noted that career portability can be a challenge for a professional military spouse and this rule would appear to reduce the barrier without imposing financial burdens on military spouse professionals who move from other states to Texas.

The Board thanks TOTA for the comment, which does not suggest any changes to the proposal. Therefore, the Board neither considered nor made any changes to the proposal based on the comment.

The new rule is adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 October 25, 2019.

TRD-201903953
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: December 1, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 305-6900

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CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §370.1, concerning license renewal, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4852). The rule will not be republished.

The amendments are adopted to remove language concerning restrictions to renewal for a licensee in default of a student loan pursuant to SB 37 of the 86th Regular Legislative Session and to cleanup and clarify provisions in the section.

The adoption includes amendments to reflect law changes, already in effect, made by SB 37, relating to a prohibition on the use of student loan default or breach of a student loan repayment as a ground for refusal to renew a license. Related changes to §370.1 are adopted to remove from the section a provision restricting the renewal of a license for an individual who has defaulted with the Texas Guaranteed Student Loan Corporation.

Additional amendments are adopted as cleanups and clarifications. An amendment is adopted to strike a reference in the section to the number of continuing education hours required per renewal period and to replace such with language referencing continuing education requirements as per Chapter 367, concerning Continuing Education, as previously adopted amendments to that chapter changed the number of required hours from thirty to twenty-four hours. Additional amendments are adopted to remove a redundant reference to the address of record, as language concerning such is already located elsewhere in the Occupational Therapy Rules, and to clarify a provision regarding a restriction on renewal for certain child support issues, including to add a reference to related statutory language in Texas Family Code.

One comment was received from the Texas Occupational Therapy Association (TOTA) in support of the proposed new rule. TOTA noted that student debt is a serious consideration that can affect an occupational therapist's or occupational therapy assistant's life and that licensure restrictions due to student debt could prevent an individual from earning a living and remove the pathway to student loan repayment.

The Board thanks TOTA for the comment, which does not suggest any changes to the proposal. Therefore, the Board neither considered nor made any changes to the proposal based on the comment.

The amendments are adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 October 25, 2019.

TRD-201903955
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: December 1, 2019
Proposal publication date: September 6, 2019
For further information, please call: (512) 305-6900

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Governor

Title 1, Part 1

The Texas Military Preparedness Commission (Commission) files this notice of intention to review 1 TAC Chapter 4, Texas Military Preparedness Commission. The review is being conducted in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting the rules continue to exist. Each rule will be reviewed to determine whether to readopt, readopt with amendments, or repeal the rule.

Comments may be submitted for 30 days following the date of publication of this notice by mail to Alexandra Taylor, Office of the Governor, Texas Military Preparedness Commission, P.O. Box 12428, Austin, Texas 78711 or by email to Alexandra.Taylor@gov.texas.gov with the subject line "TMPC Rule Review."

TRD-201904022
Keith Graf
Director, Texas Military Preparedness Commission
Office of the Governor
Filed: October 30, 2019

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Adopted Rule Reviews

Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, 22 Texas Administrative Code Chapters 211 and 217, pursuant to the rule review plan adopted by the Board at its July 2018 quarterly meeting. The notice appeared in the September 13, 2019, edition of the *Texas Register,* and the comment period ended on October 14, 2019. The Board did not receive any comments on either rule chapter.

The Board has completed its review of these chapters and has determined that the reasons for originally adopting the rules continue to exist. Chapter 211 is necessary to organize and structure Board functions and Chapter 217 contains procedures and requirements for nursing licensure in Texas, criteria for the Board's peer assistance program, and standards for nursing practice and professional conduct. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Texas Government Code Chapter 2001 (Texas Administrative Procedure Act). The Board finds that the rules are not obsolete, reflect current legal and policy considerations, current procedures and practices of the Board, and that the rules are in compliance with the Texas Administrative Procedure Act.

The Board readopts the rules in Chapters 211 and 217 without changes, pursuant to the Texas Government Code §2001.039 and Texas Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 211 and 217 under the 2019 rule review plan adopted by the Board.

TRD-201904011
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Filed: October 29, 2019

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In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, 22 Texas Administrative Code Chapter 219, pursuant to the rule review plan adopted by the Board at its July 2018 quarterly meeting. The notice appeared in the September 13, 2019 edition of the *Texas Register,* and the comment period ended on October 14, 2019. The Board received one written comment from the Texas Society of Anesthesiologists.

With regard to §219.2(2), a commenter representing the Texas Society of Anesthesiologists states that the definition of *advanced practice registered nurse* found in the Nursing Practice Act (NPA) is more appropriate than the expanded version found in current §219.2. The commenter suggests amending the last sentence of §219.2(2) to read "[t]he advanced practice registered nurse acts independently, under the delegated authority of a physician and/or in collaboration with other healthcare professionals in the delivery of healthcare services". The commenter states that its suggested language is based on references found in the Texas Occupations Code §301.002(2)(G) and §301.152(b)(1) and (2)(A) and (B). The commenter further states that, on September 5, 2019, Attorney General Ken Paxton issued Opinion KP-0266, which confirms that providing and administering anesthesia is the practice of medicine and that physicians may delegate certain acts associated with the administration of anesthesia to a certified registered nurse anesthetist. Further, the commenter states that the opinion confirms a physician's ability to delegate certain medical acts to an advanced practice registered nurse, as well as the advanced practice registered nurse's authority to perform the delegated medical acts. The commenter believes, with this background, that the phrase "under the delegated authority of

a physician" is both appropriate and needed to harmonize Rule 219.2 with the NPA and the Medical Practice Act.

The commenter also suggests alternative language for §219.2(10). The commenter believes, as written, this section of the rule implies that advanced practice registered nurses are authorized to perform acts of medical diagnosis. The commenter states that the legislature has said otherwise, with a specific statement that the practice of professional nursing does not include acts of medical diagnosis in §301.002(2). The commenter believes references to "diagnosis" and "medical diagnosis" should be removed from Rule 219.2(10).

The Board declines to make the commenter's suggested changes. The Board believes the definition of *advanced practice registered nurse* in §219.2(2) is consistent with the statutory use of that term in the Texas Occupations Code §301.002(2)(G) and §301.152 and the Medical Practice Act. Section 219.2(2) does not alter the existing authorized scope of practice for an advanced practice registered nurse, the existing standards of nursing practice for an advanced practice registered nurse, or the requirements of the Medical Practice Act that relate to physician delegation, collaboration, supervision, or prescriptive authority. The commenter points out that advanced practice registered nurses may perform medical acts only when those acts are delegated by a physician. The Board does not disagree, and the definitions in Rule 219 do not alter this interpretation of Texas law. The Board agrees that an advanced practice registered nurse may only perform medical aspects of care through proper physician delegation.

The Board also finds than an individual must be properly educated and qualified to perform such delegated functions. If that were not the case, patient safety would be at risk. If an advanced practice registered nurse is delegated medical aspects of care, the advanced practice registered nurse must have the proper educational foundation in order to properly perform those delegated acts. The definitions in §219.2 do not imply that an advanced practice registered nurse may provide medical aspects of care independent of proper physician delegation. Rather, *when* an advanced practice registered nurse is delegated medical aspects of care, including diagnoses, he/she must be appropriately educated and trained to safely execute the delegated tasks. The Board does not find the definitions in §219.2 to be confusing, misleading, or overreaching in this regard, and therefore, declines to include the commenter's suggested language in the rule text.

Further, in completing its review of Chapter 219, the Board has determined that the reasons for originally adopting the rules continue to exist. Chapter 219 is necessary to establish the standards for advanced practice registered nurse education in Texas. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Texas Government Code Chapter 2001 (Texas Administrative Procedure Act). The Board finds that the rules are not obsolete, reflect current legal and policy considerations, current procedures and practices of the Board, and that the rules are in compliance with the Texas Administrative Procedure Act.

The Board thereafter readopts the rules in Chapter 219 without changes, pursuant to the Texas Government Code §2001.039 and Texas Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 219 under the 2019 rule review plan adopted by the Board.

TRD-201904020

Jena Abel
Deputy General Counsel
Texas Board of Nursing
Filed: October 29, 2019

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2621).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 111 are required because those rules were developed to regulate air pollution from visible emissions and particulate matter (PM) from different emission sources and process types and from outdoor burning. The two subchapters within Chapter 111: Subchapter A, Visible Emissions and Particulate Matter, and Subchapter B, Outdoor Burning, include emission limits, control requirements, and monitoring and sampling methods. Portions of the Chapter 111 rules were in effect prior to the creation of the United States Environmental Protection Agency but were later submitted and approved as part of the state implementation plan to attain or maintain the National Ambient Air Quality Standards for PM, with the exception of §§111.123 - 111.125, §111.127, and §111.129, relating to incineration, and §§111.131, 111.133, 111.135, 111.137, and 111.139, relating to abrasive blasting of water storage tanks by portable operations. The rules for incineration were adopted to implement Texas statutory requirements while the rules for abrasive blasting of water storage tanks were adopted in response to a particular incident.

The commission determined that §§111.111, 111.113, 111.175, and 111.181 reference outdated sections of the Texas Administrative Code that have been repealed or replaced. Section 111.111(a)(4)(A) refers to repealed §101.11(a) relating to Exemptions from Rules and Regulations. Section 111.111(a)(4)(A)(ii) refers to repealed §101.6 relating to Notification Requirements for Major Upset. Section 111.113 refers to repealed §§103.31 - 103.34 relating to Initiation of Other Than Rulemaking Hearings and §§103.41 - 103.65 relating to Adjudicative Hearings. Sections 111.175 and 111.181 refer to repealed §111.155 relating to Ground Level Concentrations.

Public Comment

The public comment period closed on June 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 111 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-201903944

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 220, Regional Assessments of Water Quality, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2621).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 220 are required because the rules establish procedures for the implementation of the Texas Clean Rivers Program under Texas Water Code (TWC), §26.0135. The rules and statute establish requirements for the strategic and comprehensive monitoring of water quality, periodic assessment of water quality in each river basin and watershed, and a process for public participation. Because TWC, §26.0135 still exists, the rules in Chapter 220 are still needed.

Public Comment

The public comment period closed on June 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 220 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903968
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 323, Waste Disposal Approvals, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2621).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 323 are required because the rules allow the executive director to develop a system for evaluating waste disposal facilities to determine if the design and operation merit state approval. The rules provide conditions under which a person whose waste disposal facility attained an approved rating can erect signs to show that the facility has been approved, and establish procedures used to evaluate waste disposal facilities after the rating system has been established. The rules in Chapter 323 implement Texas Water Code, §26.033, Rating of Waste Disposal Systems.

Public Comment

The public comment period closed on June 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 323 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903969
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 333, Brownfields Initiatives, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider each of its rules for readoption, readoption with amendments, or repeal every four years. The commission published its Notice of Intent to Review these rules in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2622).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons continue to exist. The rules in Chapter 333, Subchapter A are required because they implement Texas Health and Safety Code (THSC), Chapter 361, Subchapter S, Voluntary Cleanup Program (VCP). The stated statutory purpose of the VCP is to provide incentive to remediate property by removing liability of lenders and future landowners under certain circumstances. Sections 333.1 - 333.10 implement the VCP statute by defining relevant terms and establishing procedures relating to VCP applications and agreements, work plans and reports, and certificates of completion.

The rules in Chapter 333, Subchapter B are required because they implement THSC, Chapter 361, Subchapter V, Immunity from Liability of Innocent Owner or Operator. The statute provides certain liability protection for an owner or operator who demonstrates that his or her property has become contaminated due to a release or migration of contaminants from a source not located on the property under certain circumstances. Sections 333.31 - 333.43 implement the statute by defining relevant terms and establishing procedures relating to Innocent Owner/Operator Program applications, as well as, to the issuance, denial, or revocation of an innocent owner/operator certificate.

Public Comment

The public comment period closed on June 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 333 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903970
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 344, Landscape Irrigation, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent

to Review these rules in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2622).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 344 are required to implement Texas Occupations Code, §1903.053, which authorizes the adoption of standards for irrigation, including water conservation, irrigation system design and installation, and for compliance with local municipal codes and Texas Occupations Code, §1903.053, by an irrigator or irrigation technician. These requirements prohibit a person from acting as an irrigator or irrigation technician without first being licensed.

Public Comment

The public comment period closed on June 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 344 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903945
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles (Board) files this notice of readoption of 37 TAC, Part 5, Chapter 147, Hearings, Subchapter A, General Rules for Hearings. The review was conducted pursuant to Government Code, §2001.039. Notice of the Board's intention to review was published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2274).

As a result of the review, the Board has determined that the original justifications for these rules continue to exist. No comments on the proposed review were received. The Board readopts Chapter 147 Hearings, Subchapter A, General Rules for Hearings without amendments.

This concludes the review of 37 TAC Chapter 147, Hearings, Subchapter A, General Rules for Hearings.

TRD-201903904
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: (512) 463-8216

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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: 1 TAC §81.123(f)

Administrative Costs		
Number of Registered Voters	**Costs Allowed Thru March 31**	**Costs ~~Additional Month~~ for Runoff**
10,000 or less	$300	$75
10,001 - 25,000	$1,500	$375
25,001 - 50,000	$3,000	$750
50,001 - 140,000	$12,000	$3,000
140,001 - 325,000	$24,000	$6,000
325,001 - 500,000	$40,000	$10,000
Over 500,000	$52,000	$13,000

Figure: 1 TAC §354.1747(b)

Performer Valuation Funding Distribution

	DY9	DY10
RHP Plan Update Submission	0%	NA
Category A -Required Reporting	0%	0%
Category B -MLIU PPP	10%	10%
Category C -Measure Bundles and Measures	75%	75%
Category D -Statewide Reporting Measure Bundle	15%	15%

Figure 1: 22 TAC §165.7(j)

OUT-OF-NETWORK NOTICE & DISCLOSURE

I, _____, (PATIENT/ENROLLEE NAME) HAVE BEEN INFORMED OF AND RECEIVED A COPY OF THIS NOTICE AND DISCLOSURE STATEMENT(S) CONCERNING THE BELOW-LISTED PROVIDER(S) **OUT-OF-NETWORK STATUS.**

NAME OF OUT-OF-NETWORK PROVIDER(S):(MUST BE LEGIBILY PRINTED)

1.

2.

3.

4.

5.

6.

_____ (Enrollee/Patient Initials/Date)

I have been provided the following:

1. THE PROJECTED FINANCIAL RESPONSIBILITY FOR WHICH I MAY BE RESPONSIBLE FOR WHEN THE NONEMERGENCY HEALTH CARE SERVICES ARE RENDERED BY EACH OF THE ABOVE-REFERENCED OUT-OF-NETWORK PROVIDER.
   _____ (Enrollee/Patient Initials/Date)
2. THE CIRCUMSTANCES UNDER WHICH I WOULD BE RESPONSIBLE FOR THOSE AMOUNTS DISCLOSED.
   _____ (Enrollee/Patient Initials/Date)

A SEPARATE NOTICE AND DISCLOSURE STATEMENT FROM EACH OUT-OF-NETWORK PROVIDER.

(Enrollee/Patient Initials/Date)

3. I understand that the above-listed provider(s) are out-of-network and do/does not have a contract with my health benefit plan.
   _____ (Enrollee/Patient Initials/Date)
4. I acknowledge that I have received the following:
   a. a **COMPLETE** list of all nonemergency health care services/procedures scheduled to be performed by each of the above-listed out-of-network provider.
   _____ (Enrollee/Patient Initials/Date)

b. A written disclosure of the projected total amount for the non-emergency health care services to be provided by each of the above-listed out-of-network provider(s), including any charges for health care or medical services and supplies.

_____ (Enrollee/Patient Initials/Date)

c. A written statement containing the total amount to be billed amounts for each service provided by the out-of-network provider, less any insurance payments to the enrollee.

_____ (Enrollee/Patient Initials/Date)

5. I HEREBY ACKNOWLEDGE THAT I AM THE PATIENT/ENROLLEE. I HAVE BEEN PROVIDED THE ABOVE INFORMATION BY EACH OF THE ABOVE-LISTED OUT-OF-NETWORK PROVIDER(S) IN A SEPARATE STATEMENT ATTACHED HERETO.

_____ (Enrollee/Patient Initials/Date)

6. EACH STATEMENT ATTACHED HERETO WAS EXPLAINED TO ME, IN–PERSON, AT LEAST 7 DAYS BEFORE ANY OF THE DESCRIBED NONEMERGENCY HEALTH CARE SERVICES/PROCEDURES, MEDICAL CARE, OR SUPPLIES WERE RENDERED OR PROVIDED.

_____ (Enrollee/Patient Initials/Date)

7. I HEREBY: (Initial only one)

_____ **ACCEPT** the nonemergency health care services from the out-of-network provider and agree to accept financial responsibility as presented in the attached Notice and Disclosure Statement.

_____ **DECLINE** the nonemergency health care services from the out-of-network provider at the disclosed rate presented in the attached Notice and Disclosure Statement.

I HAVE NOT BEEN COERCED OR PLACED UNDER DURESS IN ACKNOWLEDGING AND SIGNING THE NOTICE AND DISCLOSURE STATEMENT.

_____ _____

Patient Signature Date

_____

Patient Name (Printed)

Figure 2: 22 TAC §165.7(j)

OUT-OF-NETWORK NOTICE & DISCLOSURE

THE BELOW OUT-OF-NETWORK PROVIDER(S) WILL BE PROVIDING THE DECRIBED NONEMERGENCY HEALTH CARE SERVICES, MEDICAL CARE, PROCEDURES, AND SUPPLIES TO

_____ (Enrollee/Patient Name) ON _____(Date).

1. The following nonemergency health care services/procedures are scheduled to be performed by _____ (NAME OF out-of-network provider):

   List of all services/procedures/supplies scheduled to be performed: (Print Legibly)

2. The following total projected amount, for which the enrollee/patient will be responsible, for the nonemergency health care services/procedures is:

   $_____

   You must include any charges for health care or medical services and supplies.

3. The total amount to be billed amounts for each service provided the less any insurance payments to the enrollee/patient.

   $_____

4. The total amount(s) enrollee/patient may owe out-of-network provider, including any charges for health care or medical services and supplies.

   $_____

Indicate if as an out of network physician you:

_____ will bill insurance; or

_____ if the patient must file with insurance.

Figure: 28 TAC §3.6302(e)

"Is this short-term health insurance plan right for me?"

"** You must read and sign this form. **"

<< Instructions to issuers:

- Required text is in quotation marks—remove quotation marks on your form.
- Except for contents of quotation marks, do not print the text inside two chevrons ('<<' and '>>') on the form you give to consumers.
- Content in brackets contain options. You must choose one of the options. Remove brackets on the form you give to consumers.
- Paragraph numbers and letters that are not within quotation marks and that are in bold font and enclosed in parenthesis like this **(X)** are for reference purposes only. Do not print the paragraph numbers and letters on the form you give to consumers.
- The mark X indicates the places you need to enter a number.
- The mark YYYY indicates the places you need to enter a year.
- You must use spacing of six points or more between bullets and paragraphs.
- You must bold text as indicated.
- Per statute, this form must be printed in 14-point font. >>

(1) "This plan does not need to follow federal Affordable Care Act (ACA) rules. ACA plans cover hospital, medical, and surgical expenses due to an injury or sickness. Compared to ACA plans, this short-term plan may: (1) not cover all injuries or sicknesses, and (2) not pay for some medical care you might need. Carefully read the information below so you know this plan's coverage limits and your rights under this plan."

(2) "How long will this plan cover me?"

<< Enter the number of days or months coverage will last under the initial term without any action by the consumer, assuming no fraud, misrepresentations, or failure to pay premiums. >>

"X ['days' or 'months']"

(3) "Can I renew or extend this plan?"
<< If the answer is 'No,' use: >>
"No."
<< Or, if the answer is 'Yes,' use: >>
"Yes. You have the right renew the plan X times. But the total amount of time you can be covered by this plan is limited to X ['days,' 'months,' or 'years']. The amount of your premium payment might change after you renew this plan. But the amount can't go up because of a change in your health. A change in your health can't affect your benefits or your right to renew."
<< Also explain any other option to extend the plan. >>

(4) "When this plan ends, can I sign up for another insurance plan?

- **If you want to sign up for another short-term health plan or another plan not covered by ACA laws:** You can sign up for another plan at any time. But a short-term health plan can deny you for health reasons. The amount of your premium payment might change.
- **If you want to sign up for a health plan covered by ACA laws:** You can sign up for another plan only during open enrollment or if you have a qualifying life event.
    - The next open enrollment dates are:" << To the extent possible, enter the dates of the next three open enrollment periods following the date the initial term of the policy expires. Enter the dates using the format shown below. >>
      "YYYY: [Month] [day] to [Month] [day]
      YYYY: [Month] [day] to [Month] [day]
      YYYY: [Month] [day] to [Month] [day]
    - When you sign up for a plan during HealthCare.gov open enrollment dates, your insurance coverage will start January 1.
    - To find out if you have a qualifying life event, talk to your insurance agent or go to HealthCare.gov. **The end of this plan is not a qualifying life event.**"

(5) "Am I covered for an injury, illness, or disease I had before I applied for this plan (a preexisting condition)?"

"Yes." << If the answer is 'Yes' and there are limitations or exclusions, explain them here. >>

<< If the answer is 'No'—preexisting conditions are excluded in full or in part, write: >>

"No.

- You must tell the truth when answering questions about your health.
- We can deny claims for any injury, illness, or disease you had before signing up for this plan (whether or not you tell us about your condition)."

(6) "What is the most (maximum) this plan will pay for services?"

<< Include both the policy term amount and lifetime limit amount, if applicable. >>

(7) "What is the deductible (the amount I must pay for services before this plan starts paying)?"

<< If the plan is not a PPO, use: >>

"You must pay $X (plus your premiums) before the plan will start paying for services."

<< Specify any services that are exempt from the deductible or that have different deductibles.

If the plan is a PPO, use: >>

"You must pay the following (plus your premiums) before the plan starts paying for services:

- $X for in-network services.
- $X for out-of-network services."

<< Specify any services that are exempt from the deductible or that have different deductibles. >>

(8) "Does this plan use a network of doctors / providers?"

<< Choose the applicable answer below. >>

"Yes, the plan is a PPO and has a network of doctors / providers. You can get care from in-network and out-of-network providers. Your costs are lower when you use in-network providers."

<< or >>

"Yes, the plan is an EPO and has a network of doctors / providers. Except for emergency care and some other situations, the plan covers care only from in-network providers."

<< or >>

"No. Your coverage is the same, no matter what doctor / provider you use."
<< If applicable, include: >> "The plan has a network of providers, but you are not limited by this list. If you choose an in-network provider, they will charge you a discounted price."

(9) "What services does the plan cover?"
"Review the chart below to know which benefits are covered by this plan. While ACA plans cover all listed benefits with few limits, this plan may limit coverage for some types of care."
<< The chart below may be supplemented to include cost-sharing information for each benefit. >>

"Type of care"	"Is it covered?"
<< This row is only for instructions. Remove this row on the copy you give to consumers. >>	<< For each benefit listed in the rows below, choose the applicable language: >> "Yes, coverage is like ACA plans." << or >> "Yes, but there are some limits." << or >> "No" << Explain any applicable limitations, exceptions, or other important information about the nature of coverage. >>
(a) "Emergency room visit"	<< Use the same instructions given in the first row of this column. >>
(b) "Urgent care"	<< Use the same instructions given in the first row of this column. >>
(c) "Ambulance"	<< Use the same instructions given in the first row of this column. >>
(d) "Hospital stay – facility fee (inpatient – overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(e) "Hospital stay – doctor services (inpatient – overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(f) "Day surgery – facility fee (outpatient – no overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(g) "Day surgery – doctor services (outpatient – no overnight stay)"	<< Use the same instructions given in the first row of this column. >>

"Type of care"	"Is it covered?"
(h) "Mental health services (inpatient – overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(i) "Mental health services (outpatient – no overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(j) "Alcohol / drug / substance abuse services (inpatient – overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(k) "Alcohol / drug / substance abuse services (outpatient – no overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(l) "Preventive care (includes regular checkups, and some screenings and vaccines)"	<< Use the same instructions given in the first row of this column. >>
(m) "Primary care (office visit to treat an injury or illness)"	<< Use the same instructions given in the first row of this column. >>
(n) "Specialist care office visit" (Doctors who treat one type of health issue. Examples: cancer, skin issues, allergies, heart issues, or kidney issues.)	<< Use the same instructions given in the first row of this column. >>
(o) "Drugs ordered by your doctor (prescription drugs)"	<< Use the same instructions given in the first row of this column. >>
(p) "Services for a pregnant woman: prenatal office visits"	<< Use the same instructions given in the first row of this column. >>

"Type of care"	"Is it covered?"
(q) "Services for a pregnant woman: delivery – doctor services"	<< Use the same instructions given in the first row of this column. >>
(r) "Services for a pregnant woman: delivery – facility fee"	<< Use the same instructions given in the first row of this column. >>

(10) "You must confirm you read and understand this form:"
"Did you read and understand the limited benefits offered by this plan?
☐ Yes, I read and understand the benefits and limits of this plan."

"Type or sign your name:

_____

Date:
_____"

---

(11) "Federal notice: This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

Figure: 30 TAC §305.69(k)

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes	2
5. Schedule of compliance	
a. Changes in interim compliance dates, with prior approval of the executive director	1[1]
b. Extension of final compliance date	3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director	1[1]
7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) of this title (relating to Transfer of Permits) are followed	1[1]
8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units in accordance with §305.149(b)(2) or (4) of this title (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units)	2
9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit in accordance with §305.149(b)(3) or (4) of this title	3
10. Any extension in accordance with §305.149(b)(3) of this title of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) of this title	3
11. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility)	1[1]

B. General Facility Standards
1. Changes to waste sampling or analysis methods:
a. To conform with agency guidance or regulations.....1
b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods.....1[1]
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.....1[1]
d. Other changes.....2
2. Changes to analytical quality assurance/control plan:
a. To conform with agency guidance or regulations.....1
b. Other changes.....2
3. Changes in procedures for maintaining the operating record.....1
4. Changes in frequency or content of inspection schedules.....2
5. Changes in the training plan:
a. That affect the type or decrease the amount of training given to employees.....2
b. Other changes.....1
6. Contingency plan:
a. Changes in emergency procedures (i.e., spill or release response procedures).....2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.....1
c. Removal of equipment from emergency equipment list.....2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.....1
7. Construction quality assurance (CQA) plan:
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications.....1
b. Other Changes.....2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater Protection

1. Changes to wells:

a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system.....2

b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.....1

2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director.....1[1]

3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director.....1[1]

4. Changes in point of compliance.....2

5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits (ACLs)):

a. As specified in the groundwater protection standard.....3

b. As specified in the detection monitoring program.....2

6. Changes to a detection monitoring program as required by §335.164(8) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix.....2

7. Compliance monitoring program:

a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title, and §335.165 of this title (relating to Compliance Monitoring Program).....3

b. Changes to a compliance monitoring program as required by §335.165(13) of this title, unless otherwise specified in this appendix.....2

8. Corrective action program:

a. Addition of a corrective action program pursuant to §335.165(11)(B) of this title and §335.166 of this title (relating

to Corrective Action Program).....3
b. Changes to a corrective action program as required by §335.166(8) of this title, unless otherwise specified in this appendix.....2
D. Closure
1. Changes to the closure plan:
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director.....1[1]
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director.....1[1]
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director.....1[1]
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director.....1[1]
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.....2
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 Code of Federal Regulations (CFR), §264.113(d) and (e).....2
2. Creation of a new landfill unit as part of closure.....3
3. Addition of the following new units to be used temporarily for closure activities:
a. Surface impoundments.....3
b. Incinerators.....3
c. Waste piles that do not comply with 40 CFR §264.250(c).....3
d. Waste piles that comply with 40 CFR §264.250(c).....2
e. Tanks or containers (other than specified below).....2

f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director.....1[1]
g. Staging Pile 2
E. Post-Closure
1. Changes in name, address, or phone number of contact in post-closure plan.....1
2. Extension of post-closure care period.....2
3. Reduction in the post-closure care period.....3
4. Changes to the expected year of final closure, where other permit conditions are not changed.....1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.....2
F. Containers
1. Modification or addition of container units:
a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix.....3
b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix.....2
c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1[1]
2. Modification of container units, as follows:
a. Modification of a container unit without increasing the capacity of the unit.....2
b. Addition of a roof to a container unit without alteration of the containment system.....1
3. Storage of different wastes in containers, except as provided in F(4) of this appendix:

a. That require additional or different management practices from those authorized in the permit.....3
b. That do not require additional or different management practices from those authorized in the permit.....2
Note: See §305.69(g) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for modification procedures to be used for the management of newly listed or identified wastes.
4. Storage or treatment of different wastes in containers:
a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1[1]
b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
5. Other changes in container management practices (e.g., aisle space, types of containers, segregation).....2
G. Tanks
1. Modification or addition of tank units or treatment processes, as follows:
a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) of this appendix.....3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) of this appendix.....2
c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.....2
d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies:

neutralization, dewatering, phase separation, or component separation.....11

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....11

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.....2

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:.....1

a. The capacity difference is no more than 1,500 gallons;

b. The facility's permitted tank capacity is not increased; and

c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice.....2

5. Management of different wastes in tanks:

a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) of this appendix.....3

b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) of this appendix.....2

c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027,and 028).....11

d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the

units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.
H. Surface Impoundments
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.....3
2. Replacement of a surface impoundment unit.....3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.....2
4. Modification of a surface impoundment management practice.....2
5. Treatment, storage, or disposal of different wastes in surface impoundments:
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
6. Modifications of unconstructed units to comply with 40 CFR §§264.221(c), 264.222, 264.223, and 264.226(d)……. 1₁
7. Changes in response action plan:

a. Increase in action leakage rate.....3
b. Change in a specific response reducing its frequency or effectiveness.....3
c. Other Changes.....2
Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.
I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR §264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR §264.250(c).
1. Modification or addition of waste pile units:
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.....3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity.....2
2. Modification of waste pile unit without increasing the capacity of the unit.....2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.....1
4. Modification of a waste pile management practice.....2
5. Storage or treatment of different wastes in waste piles:
a. That require additional or different management practices or different design of the unit.....3
b. That do not require additional or different management practices or different design of the unit.....2
Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.
6. Conversion of an enclosed waste pile to a containment building unit.....2
J. Landfills and Unenclosed Waste Piles
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.....3
2. Replacement of a landfill.....3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....3

4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....2
5. Modification of a landfill management practice.....2
6. Landfill different wastes:
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.
7. Modifications of unconstructed units to comply with 40 CFR §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304.….....11
8. Changes in response action plan:
a. Increase in action leakage rate.....3
b. Change in a specific response reducing its frequency or effectiveness.....3
c. Other changes.....2
K. Land Treatment
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent.....3

2. Modification of run-on control system.....2
3. Modify run-off control system.....3
4. Other modifications of land treatment unit component specifications or standards required in the permit.....2
5. Management of different wastes in land treatment units:
a. That require a change in permit operating conditions or unit design specifications.....3
b. That do not require a change in permit operating conditions or unit design specifications.....2
Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.
6. Modification of a land treatment management practice to:
a. Increase rate or change method of waste application.....3
b. Decrease rate of waste application.....1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions.....2
8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops.....3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR §264.278(g)(2).....3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements.....3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements.....2
12. Changes in background values for hazardous constituents in soil and soilpore liquid.....2
13. Changes in sampling, analysis, or statistical procedure.....2

14. Changes in land treatment demonstration program prior to or during the demonstration.....2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received.....1₁
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director.....1₁
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.....3
18. Changes in vegetative cover requirements for closure.....2
L. Incinerators, Boilers and Industrial Furnaces
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory

performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards.....2
5. Operating requirements:
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.....3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.....2
6. Burning different wastes:
a. If the waste contains a principal organic hazardous constituent (POHC) that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.....2
Note: See §305.69(g) of this title for modification procedures to be used for the management of newly regulated wastes and units.
7. Shakedown and trial burn:
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.....2

b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director.....1[1]
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director.....1[1]
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director.....1[1]
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit.....1
9. Technology changes needed to meet standards under Title 40 CFR Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), provided the procedures of §305.69(i) of this title are followed.....1[1]
10. Changes to Resource Conservation and Recovery Act permit provisions needed to support transition to §113. 620 of this title and 40 CFR Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) provided the procedures of 40 CFR §270.42(k) are followed.....1[1]
M. Corrective Action
1. Approval of a corrective action management unit pursuant to 40 CFR §264.552.....3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 CFR §264.553.....2
3. Approval of a staging pile or staging pile operating term extension pursuant to 40 CFR §264.554.....2
N. Containment Buildings
1. Modification or addition of containment building units:
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.....3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.....2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.....2
3. Replacement of a containment building with a containment building that meets the same design standards provided:

a. The unit capacity is not increased.....1
b. The replacement containment building meets the same conditions in the permit.....1
4. Modification of a containment building management practice.....2
5. Storage or treatment of different wastes in containment buildings:
a. That require additional or different management practices.....3
b. That do not require additional or different management practices.....2
O. Burden Reduction
1. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to 40 CFR §264.52(b).....1
2. Changes to recordkeeping and reporting requirements pursuant to: 40 CFR §§264.56(i), 264.343(a)(2), 264.1061(b)(1) and (d), 264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5).....1
3. Changes to inspection frequency for tank systems pursuant to 40 CFR §264.195(b) 1
4. Changes to detection and compliance monitoring program pursuant to 40 CFR §§264.98(d), (g)(2), and (g)(3), 264.99(f), and (g).....1

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Central Texas Regional Mobility Authority

Notice of Availability of Request for Proposals for Government Relations Consulting Services

The Central Texas Regional Mobility Authority ("Mobility Authority") is soliciting proposals from individuals or firms interested in providing the Mobility Authority with state and local government relations consulting services. These services include, but are not limited to: familiarity with state and federal legislative processes; knowledge of relevant legislation and access to resources to timely and effectively track legislation; demonstration of creative strategies in developing new relationships between the Mobility Authority, federal, state and local agencies, or private entities that may provide a direct or indirect benefit to the Mobility Authority.

The request for proposals ("RFP") will be available on or about November 1, 2019. Copies may be obtained from the Business Opportunities section of the Mobility Authority website at www.mobilityauthority.com/business/opportunities/procurements. Additionally, prospective proposers may request a copy of the RFP from the Mobility Authority's offices, located at 3300 N IH-35, Suite 300, Austin, TX 78705 or by calling (512) 996-9778. Periodic updates, addenda, and clarifications may be posted on the website, and interested parties are responsible for monitoring the website accordingly.

Final responses to the RFP must be received via email to dheath@ctrma.org no later than 4:00 p.m. local time, November 22, 2019, to be eligible for consideration.

TRD-201904035
Dee Anne Heath
Director of External Affairs
Central Texas Regional Mobility Authority
Filed: October 30, 2019

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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 11/04/19 - 11/10/19 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 11/04/19 - 11/10/19 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-201904015
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 29, 2019

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Texas Education Agency

Public Notice of Texas Request of a Waiver from 1.0% State Cap on the Percentage of Students Who Take an Alternate Assessment

Purpose and Scope of Waiver Request. Texas is requesting a waiver from the U.S. Department of Education (USDE) regarding the 1.0% threshold on the percentage of students statewide who participate in alternate assessments aligned with alternate academic achievement standards (AA-AAAS) during the 2019-2020 school year.

The USDE is allowing states to request a waiver of the 1.0% cap in the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), §1111(b)(2)(D)(i)(I), on the number of students who participate in AA-AAAS. As described in 34 Code of Federal Regulations §200.6(c)(3), a state may not prohibit a district from assessing more than 1.0% of its assessed students with an AA-AAAS. However, a state must require a district that assesses more than 1.0% of its assessed students in any subject with an AA-AAAS to submit information to the state justifying the need to exceed the 1.0% threshold. States must provide appropriate guidance and oversight of each district that is required to submit such an explanation and must make the explanation publicly available, provided that it does not reveal personally identifiable information about an individual student.

As a result, Texas is seeking a waiver from this requirement pursuant to the ESEA, as amended by the ESSA, §8401(b). Specifically, Texas is requesting a limited waiver of the ESEA, as amended by the ESSA, §1111(b)(2)(D)(i)(I), so that the state's assessment system may have slightly more than 1.0% of students taking the AA-AAAS during the 2018-2019 school year. Texas requested and was granted a wavier for the previous school year.

The requested waiver would be effective through the 2018-2019 school year. Texas will verify that each district that assesses more than 1.0% of its assessed students using an AA-AAAS followed the state's guidelines for participation in the AA-AAAS and will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.

A copy of the waiver request is available on the Texas Education Agency website at https://tea.texas.gov/student.assessment/special-ed/staaralt/.

Public Comments. The public comment period on the waiver request begins November 8, 2019, and ends December 9, 2019. Comments on the waiver request may be submitted electronically to assessmentwaiver@tea.texas.gov.

Further Information. For more information, contact Julie Guthrie, director of policy and publications, by mail at Student Assessment Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9536; or by email at assessmentwaiver@tea.texas.gov.

TRD-201904024

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 30, 2019

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Request for Applications Concerning the 2020-2021 Technology Lending Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-110 is authorized by General Appropriations Act, Article III, Rider 8, 86th Texas Legislature, 2019, and Texas Education Code (TEC), §32.301.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-20-110 from eligible applicants, which include local educational agencies (LEAs) that have an enrollment of at least 40% economically disadvantaged students at the participating campus(es). Eligibility will be determined using the 2018-2019 Campus Report data from the Texas Student Data System Public Education Information Management System (TSDS PEIMS) accessible on the TEA website at https://tea.texas.gov/2019accountability.aspx. Applicants should use the downloadable overview of statewide ratings data available in Excel from the previously referenced web page in order to ascertain campus eligibility. Identify eligible campus(es) by name and campus identification number (CID). The exact name and CID from the 2018-2019 Campus Report must be submitted in the application in order to meet eligibility. LEAs must show evidence of a technology plan at participating campuses by submitting an attachment of a locally approved technology plan that is valid through the 2020-2021 school year. Previous Technology Lending Grant award recipients are eligible; priority points will be awarded based upon past awards.

Description. TEC, §32.301, authorizes TEA to establish the Technology Lending Grant. The program awards grants to LEAs to implement a technology lending program to loan students the equipment necessary to access and use digital instructional materials. TEA will consider the availability of existing equipment to students in the LEA and other funding available to the LEA when awarding grants. With the 2020-2021 Technology Lending Grant, LEAs can continue using digital instructional materials while ensuring equitable access for students through loaned equipment for learning off campus. For the purposes of this program, "equipment" means personal, portable wireless devices such as laptops, tablets, or other technological devices that provide access to those digital materials required to meet the objectives of the district's or charter school's technology plan. The purchase of equipment includes an operating system and productivity software, where applicable.

Dates of Project. The 2020-2021 Technology Lending Grant will be implemented during the 2020-2021 school year. Applicants should plan for a starting date of no earlier than April 6, 2020, and an ending date of no later than August 31, 2021.

Project Amount. Approximately $10 million is available for funding the 2020-2021 Technology Lending Grant. It is anticipated that approximately 144 grants will be awarded ranging in amounts from $50,000 to $150,000. This project is funded 100% with state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to techlending@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Monday, December 2, 2019. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Friday, December 6, 2019. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, January 9, 2020, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Grants Administration Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Issued in Austin, Texas, on October 30, 2019.

TRD-201904025
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 30, 2019

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 12, 2019.** 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 jurisdic-

tion 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 **December 12, 2019.** 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: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2019-1006-AIR-E; IDENTIFIER: RN100215334; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 32274, PSDTX995M1, and N042, Special Conditions (SC) Numbers 1 and 5.B, Federal Operating Permit (FOP) Number O2391, 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 concentration limit and maximum allowable emissions rate; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 32274, PSDTX995M1, and N042, SC Numbers 6.A and 6.B, FOP Number O2391, GTC and STC Number 11, and THSC, §382.085(b), by failing to comply with the concentration limits; PENALTY: $31,875; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Atmos Energy Corporation; DOCKET NUMBER: 2019-1093-AIR-E; IDENTIFIER: RN100542588; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O3868, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance and failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $3,937; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: BASF Corporation; DOCKET NUMBER: 2019-0283-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 8074A, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1928, General Terms and Conditions (GTC) and Special Terms and Conditions Number 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1928, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $20,188; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,094; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Bell-Milam-Falls Water Supply Corporation; DOCKET NUMBER: 2018-1527-MLM-E; IDENTIFIER: RN101233922; LOCATION: Bartlett, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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; TWC, §26.039(b), by failing to ensure that whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility notifies the commission as soon as possible and not later than 24 hours after the occurrence; and TWC, §26.121(a)(1), by failing to obtain authorization to discharge industrial waste into or adjacent to any water in the state; PENALTY: $8,460; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Baytown; DOCKET NUMBER: 2019-0894-MWD-E; IDENTIFIER: RN104153697; LOCATION: Baytown, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010395010, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $18,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $14,400; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: City of Crockett; DOCKET NUMBER: 2019-0506-MWD-E; IDENTIFIER: RN101609741; LOCATION: Crockett, Houston County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010154001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $11,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $9,000; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: City of East Tawakoni; DOCKET NUMBER: 2019-0500-MWD-E; IDENTIFIER: RN101917847; LOCATION: East Tawakoni, Rains County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011428001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0011428001, Sludge Provisions, Section I.F., Reporting Requirements, by failing to submit the annual sludge report by September 30th of each year; PENALTY: $20,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $16,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Trenton; DOCKET NUMBER: 2019-0524-PWS-E; IDENTIFIER: RN101221489; LOCATION: Trenton, Fannin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 (taps) that were tested and failing to mail a copy of the consumer notification of tap results to the executive director (ED), along with certification that the consumer notification was distributed in a manner consistent with TCEQ requirements for the January 1, 2018 - June 30, 2018, monitoring period; 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, 2012 - December 31, 2014, January 1, 2015 - December 31, 2015, January 1, 2016 - June 30, 2016, and July 1, 2016 - December 31, 2016, monitoring periods, and 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 collect lead and copper tap samples for the July 1, 2017 - December 31, 2017, monitoring period; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR is correct and consistent with the compliance monitoring data for calendar year 2017; PENALTY: $367; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: F & M Starmart Company LLC dba Star Mart; DOCKET NUMBER: 2019-0673-PST-E; IDENTIFIER: RN102011830; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Grand Harbor Water Supply Corporation; DOCKET NUMBER: 2019-0526-PWS-E; IDENTIFIER: RN104497946; LOCATION: Runaway Bay, Wise 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 the quarter for the third and fourth quarters of 2018; 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; 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 July 1, 2018 - December 31, 2018, monitoring period; and 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 (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with a certification that the consumer notification was distributed in a manner consistent with the TCEQ requirements for the January 1, 2018 - June 30, 2018, monitoring period; PENALTY: $774; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Grassland Water Supply Corporation; DOCKET NUMBER: 2019-0834-PWS-E; IDENTIFIER: RN101244093; LOCATION: Post, Lynn County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2015 - June 30, 2015, July 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2018, monitoring periods; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide a public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect one groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive sample was collected during the month of June 2017 and failing to submit a Disinfectant Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the fourth quarter of 2017; PENALTY: $360; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(12) COMPANY: Horizon Regional Municipal Utility District; DOCKET NUMBER: 2019-0785-MWD-E; IDENTIFIER: RN102329075; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), Texas Pollutant Discharge Elimination System Permit Number WQ0010795001, Effluent Limitation and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: $18,600; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(13) COMPANY: Keith Franklin McNeese; DOCKET NUMBER: 2019-0457-MSW-E; IDENTIFIER: RN110722980; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: $1,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(14) COMPANY: KICKER 13 LLC dba Weatherford KOA; DOCKET NUMBER: 2019-0760-PWS-E; IDENTIFIER: RN101457844; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to ensure that wellheads and pump bases are sealed by a gasket or sealing compound and properly vented with a well casing vent that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.42(e)(2), by failing to disinfect all groundwater prior to distribution with a point of application ahead of the ground storage tank, and in a manner consistent with 30 TAC §290.110; 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use; 30 TAC §290.42(j), by failing to ensure that all chemicals used in treatment of water supplied by public water systems conform to American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.43(e), by failing to ensure that all potable water storage tanks and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection

was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or a backflow prevention assembly, as identified in 30 TAC §290.47(f); 30 TAC §290.45(c)(1)(B)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallon per minute (gpm) per unit; 30 TAC §290.45(c)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps which have a total capacity of 1.0 gpm per unit; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(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)(D)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual within the distribution system with a color comparator using current reagents; and 30 TAC §290.121(a) and (b), by failing to maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $2,220; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Lake Amistad Rentals, L.L.C.; DOCKET NUMBER: 2019-1013-PWS-E; IDENTIFIER: RN101233294; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.122(a)(2) and (f), by failing to timely provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the acute maximum contaminant level for nitrate during the second quarter of 2019; PENALTY: $50; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(16) COMPANY: PeroxyChem LLC; DOCKET NUMBER: 2019-0872-AIR-E; IDENTIFIER: RN100215417; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 6532, Special Conditions Number 7, Federal Operating Permit Number O1309, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to comply with the minimum removal efficiency; PENALTY: $10,800; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: PETRO-Q CORP dba Q Stop; DOCKET NUMBER: 2019-1063-PST-E; IDENTIFIER: RN102658655; LOCATION: Lancaster, Dallas County; TYPE OF FACILITY: an underground storage tank (UST) system and a ground storage tank system; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Pine Lake Water Supply Corporation; DOCKET NUMBER: 2019-1029-PWS-E; IDENTIFIER: RN101455236; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f), by failing to submit a recommendation to the executive director (ED) for optimal corrosion control treatment within six months after the end of the January 1, 2018 - December 31, 2018, monitoring period, during which the lead action level was exceeded, and 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 submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2018 - December 31, 2018, monitoring period, during which the lead action level was exceeded; and 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2018 - December 31, 2018, monitoring period, during which the lead action level was exceeded, and 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 submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2018 - December 31, 2018, monitoring period, during which the lead action level was exceeded; PENALTY: $112; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Sophia Group, LLC. dba Louis Food Store; DOCKET NUMBER: 2019-1111-PST-E; IDENTIFIER: RN102546561; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Texas Natural Rainwater Harvesting & Bottling, LLC; DOCKET NUMBER: 2019-0891-PWS-E; IDENTIFIER: RN105949259; LOCATION: Smithville, Bastrop County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e) and §290.122(c)(2)(A) and (f), by failing to provide the results of metals and minerals sampling for the January 1, 2017 - December 31, 2017, and January 1, 2018 - December 31, 2018, monitoring periods, and the results of nitrate sampling for the January 1, 2018 - December 31, 2018, monitoring period, and failing to issue public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to report the results of metals and minerals sampling to the ED for the January 1, 2017 - December 31, 2017, monitoring period; and 30 TAC §290.107(e) and §290.122(c)(2)(A) and (f), by failing to provide the results of synthetic organic chemical (SOC) contaminants (SOC Group 5 and methods 504, 515, and 531) sampling to the ED for the January 1, 2017 - December 31, 2017, and January 1, 2018 - December 31, 2018, monitoring periods, failing to issue 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 the results for SOC contaminants sampling for the January 1, 2017 - December 31, 2017 monitoring period, failing to provide the results of volatile organic chemical (VOC) contaminants sampling to the ED for the January 1, 2017 - December 31, 2017, and January 1, 2018 - December 31, 2018, monitoring periods, and failing to issue public notification and submit a copy of the notification,

accompanied with a signed Certificate of Delivery, to the ED regarding the failure to report the results for VOC contaminants sampling for the January 1, 2017 - December 31, 2017, monitoring period; PENALTY: $385; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-201904008
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 29, 2019

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 295

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 295, Water Rights, Procedural, §295.159, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would add §295.159(c) which would provide an exception from notice requirements in §§295.159(a) and (b) relating to an application for an extension of time to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

The commission will hold a public hearing on this proposal in Austin on December 3, 2019, at 10:00 a.m. in Room 201S in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2019-109-295-OW. The comment period closes December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Kathleen Ramirez, Water Availability Division, (512) 239-6757.

TRD-201903908
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, 350

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 33, Consolidated Permit Processing, §33.25; 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions, §35.13 and §35.25; 30 TAC Chapter 39, Public Notice, §§39.402, 39.403, 39.501, 39.503, 39.651, and 39.709; 30 TAC Chapter 50, Action on Applications and Other Authorizations, §§50.102, 50.113, 50.131, and 50.139; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, §§55.201, 55.209, 55.253, and 55.254; 30 TAC Chapter 60, Compliance History, §60.1; 30 TAC Chapter 70, Enforcement, §70.109; 30 TAC Chapter 80, Contested Case Hearings, §§80.109, 80.117, 80.118, and 80.151; 30 TAC Chapter 90, Innovative Programs, §90.22; 30 TAC Chapter 205, General Permits for Waste Discharges, §205.3; 30 TAC Chapter 285, On-Site Sewage Facilities, §285.10; 30 TAC Chapter 294, Priority Groundwater Management Areas, §294.42; 30 TAC Chapter 305, Consolidated Permits, §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401 and 305.572; 30 TAC Chapter 321, Control of Certain Activities by Rule, §§321.97, 321.212, and 321.253; 30 TAC Chapter 331, Underground Injection Control, §331.202; 30 TAC Chapter 332, Composting, §332.35; 30 TAC Chapter 334, Underground and Aboveground Storage Tanks, §334.484; 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, §335.21; and 30 TAC Chapter 350, Texas Risk Reduction Program, §350.74 and proposed new sections under 30 TAC Chapter 39, Public Notice, §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011.

The proposed rulemaking would amend rules to update cross-references and remove or replace obsolete text determined to be unnecessary primarily as a result of the Quadrennial Reviews of Chapters 39, 50, 55, 80, and 116.

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

TRD-201903943
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 39, 50, 55, and 80

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding the proposed repeal of 30 TAC Chapter 39, Public Notice, Subchapters A - E; Chapter 50, Action on Applications and Other Authorizations, Subchapters A - C; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, Subchapters A and B; and Chapter 80, Contested Case Hearings, §§80.3, 80.5, and 80.251, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would repeal rules determined to be obsolete as a result of the Quadrennial Review of Chapters 39, 50, 55, and 80. These rules generally applied to certain permit applications declared administratively complete before September 1, 1999. The repeal of these rules would eliminate any possible confusion as to what the applicable public participation requirements are and remove obsolete sections from the commission's rules.

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2019-119-039-LS. The comment period closes December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

TRD-201903960
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 39, 55, 101, 116, and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 39, Public Notice, §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, §55.154 and §55.156; Chapter 101, General Air Quality Rules, §101.306; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, §116.111 and §116.112 under the requirements of Texas Government Code, Chapter 2001, Subchapter B; and revisions to the State Implementation Plan (SIP).

The following rules would be submitted to the United States Environmental Protection Agency as revisions to the SIP: §§39.405(g)(3) and (h)(2)(C) and (3); 39.411(e)(4)(A)(i) and (5), (f)(8), and (g); 39.419(e)(1); 39.420(d)(6); 39.601; 39.603; 55.154(c), (c)(3), (e), and (f); 55.156(a) and (c); 101.306; 116.111; and 116.112(a).

The proposed rulemaking would amend rules to update cross-references and remove or replace obsolete text determined to be unnecessary as a result of the Quadrennial Reviews of Chapters 39, 50, 55, and 80.

The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2019-120-039-LS. The comment period closes December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.

TRD-201903967
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2019

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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 October 2019 Update to the WQMP for the State of Texas.

Download the draft October 2019 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) per-

mits, 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. December 12, 2019.**

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-201904009
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 29, 2019

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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 October 14, 2019 to October 25, 2019. 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, November 1, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, December 1, 2019.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Port Arthur Navigation District

Location: The project site is located in Sabine-Neches Canal adjacent to the Sabine-Neches Ship Channel, at 221 Houston Avenue (Port of Port Arthur), in Port Arthur, Jefferson County, Texas.

Latitude & Longitude (NAD 83): 29.855622 -93.944465

Project Description: The applicant is requesting to construct a new 1,000-foot-long by 62-foot-wide wharf (Berth 6) with driven concrete support piling and mechanically drill and/or hydraulically dredge an additional 4.70 acres from the Sabine-Neches Canal. The applicant proposed to utilize existing and previously authorized dredge material placement areas (DMPAs).

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2011-00303. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 20-1042-F1

Applicant: Texas Parks and Wildlife Department

Location: The project site is located in West Bay as well as Dana Cove, Carancahua, Butterowe, and Oak Bayous, north of Galveston Island State Park, in Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.21277 -94.975067

Project Description: The applicant proposes to dredge approximately 67,000 cubic yards of sediment from 15,800 linear feet of optional construction flotation/access channels to facilitate the construction of a rock breakwater. The channel bottom width would range from 60 ft. - 100 ft., totaling a maximum of approximately 37 acres. The dredged material would be temporarily side cast directly adjacent to the construction access channels and returned to the access channels after the rock breakwater is constructed. Upon completion of work, dredged material shall be placed back into the channels. The proposed project would place approximately 31,250 cubic yards of graded rock riprap to construct 7,550 linear feet of breakwater. The bottom width range of the breakwater would range from 21 ft. - 34 ft. and would cover a maximum of approximately 5.9 acres of bay bottom. The rock breakwater will be constructed to elevation ~3.5 NAVD 88.

The rock breakwaters would be constructed at the mouths of Oak Bayou, and Dana Cove. The breakwaters would follow the alignment of deteriorated geo-textile tubes that were constructed in 1998-1999. A backhoe on a barge will also be used to dredge the optional flotation channel and then place the dredged material in the temporary stockpile area and return the dredged material to the flotation channels after the breakwater is constructed.

The purpose of the project is to protect existing estuarine habitat, approximately 87 acres of emergent marsh, approximately 12 acres of mud and sand flats from erosion and to protect and enhance approximately 311 acres of shallow open water including seagrass beds. The proposed project would also complement other restoration projects that have been completed at this area; the most recent being the Recovery Act: Restoring Estuarine Habitat in West Galveston Bay constructed in 2010 and the Galveston Island State Park Marsh Restoration and Protection in Carancahua Cove and Dana Cove Project in 2017 (SWG-2009-00292).

This project has received funding through the National Fish and Wildlife Foundation (NFWF) Gulf Environmental Benefit Fund (GBEF). This funding source was created out of the criminal settlements associated with the Deepwater Horizon (DWH) oil spill. The project is being jointly managed by the Texas General Land Office and Texas Parks and Wildlife Department.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1998-02298. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under Section 401 of the Clean Water Act.

CMP Project No: 20-1017-F1

Applicant: The Kansas City Southern Railway Company

Location: The project site is located along the Sabine Neches Canal, at DD 7 Levee Road, in Port Arthur, Jefferson County, Texas.

Latitude & Longitude (NAD 83): 29.942325 -93.876129

Project Description: The applicant proposes to discharge 45,000 cubic yards of fill material into 13.99 acres of palustrine forested (PFO) wetlands and 0.07 acres of palustrine emergent (PEM) wetlands during the construction of a loop track and tank terminal facility at the Port

Arthur Terminal. The terminal facility will allow for the storage and transloading of various types of crude oil, bitumen, distillates, residual oils, renewable fuels, natural gas liquids, and/or related petroleum products.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2013-00399. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under Section 401 of the Clean Water Act.

CMP Project No: 20-1043-F1

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Army Engineering District, Galveston

Location: The project site is located in the Corpus Christi Ship Channel, and adjacent waterbodies that will be directly affected by the proposed general permit located in Aransas, Nueces, and San Patricio Counties, Texas.

Project Description: This general permit would authorize work in navigable waters of the U.S. to facilitate utility line removals that impact the construction of the Federally Authorized CCSCIP as ordered by the Corps' District Engineer (DE) *Directive to Remove* letters sent out on behalf of the Secretary of the Army. Authorized work would include new work hydraulic and/or mechanical dredging around the utility lines to an extent of exposure for safe removal without adversely affecting the Federal Project. Dredged material excavated within 500 feet from the "top-of-slope" on both sides of the CCSCIP would be deposited in an area that has no waters of the U.S. or in designated upland confined dredged material placement areas (DMPA). Temporary dredged and/or fill material resulting from trench excavation for the purpose of utility line removal, and/or from dredging beyond the 500-foot limit of the top-of-slope of the CCSCIP, may be temporarily side cast into waters of the U.S. for no more than 90 days. Best management practices (BMPs) would be utilized to the fullest extent practicable when handling temporary dredged and/or fill material. Temporary dredged and/or fill material would consist of native material removed (excavated or dredged) for the purpose of utility line removal. Temporary fills would not be placed in special aquatic sites, (i.e., vegetated shallows, tidal and/or non-tidal wetlands), or in a manner that would not be eroded by expected high flows nor dispersed by currents or other forces. After conducting the utility line removal activity, temporary fills would be removed and replaced with the same native material excavated for the purpose of removing the utility line in their entirety. All affected areas, including the temporary fill areas, would be returned to pre-construction elevations. This general permit would also authorize temporary structures and/or work necessary for construction activities for utility line removal (i.e., cofferdams, dewatering). All temporary workspaces would be restored to preconstruction contours and elevations to the fullest practicable extent to where it does not adversely impact the CCSCIP, does not create shoaling, and does not create high points within the Federal Project or other navigable waterways. This general permit would also authorize utility line removal (if not previously authorized) from within the CCSC and adjacent bay systems directly affected by the utility line removal.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00315. This application will be reviewed pursuant to Section 10 and 14 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under Section 401 of the Clean Water Act.

CMP Project No: 20-1045-F2

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-201904029
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: October 30, 2019

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Texas Health and Human Services Commission

Amended Notice

THIS NOTICE WAS ORIGINALLY PUBLISHED IN THE NOVEMBER 1, 2019, ISSUE OF THE *TEXAS REGISTER*. THE ORIGINAL NOTICE INDICATED TWO PROPOSED EFFECTIVE DATES FOR THE WAIVER AMENDMENT: MARCH 9, 2019, AND MARCH 9, 2020. THE PRESENT NOTICE IS A CORRECTION TO REFLECT THE ACTUAL PROPOSED EFFECTIVE DATE OF MARCH 9, 2020.

Home and Community-based Services (HCS) waiver effective March 9, 2020.

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Home and Community-based Services (HCS) waiver administered under section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2023. The proposed effective date for the amendment is March 9, 2020.

The request proposes to amend the waiver as follows:

Appendix B

Changing interest list procedures for individuals who lose eligibility for the Medically Dependent Children Program, to comply with Senate Bill 1207 of the 86th Texas Legislature.

Revising the terminology for the Medicaid eligibility groups for consistency with payment codes.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix C

Correcting the licensing chapter for dentists as Dental service providers and adding dental hygienists as Dental service providers.

Correcting the licensing chapter for Behavioral Support service providers.

Appendix D

Removing performance measure D.e.1, relating to the number and percent of individuals who were afforded choice between waiver services and institutional care during enrollment or service plan renewal, which CMS no longer requires states to report.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and

Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix E

Clarifying the budget authority for participants in the consumer-directed services option around requests to change the budget by the participant.

Appendix F

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix G

Replacing the term "adult daycare" with "day activity health services" to reflect a change in state law.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

These changes will not have an impact on cost neutrality of the HCS waiver program.

The complete proposed waiver amendment can be found online on the Health and Human Services website at https://hhs.texas.gov/laws-regulations/policies-rules/waivers/hcs-waiver-applications.

The HCS waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes or in the home of a family member, or in another community setting, such as a small three or four-person home. To be eligible for the program, an individual must meet financial eligibility criteria and meet the level of care required for admission into an intermediate care facility for individuals with an intellectual disability or related condition.

If you want a free copy of the proposed waiver amendment, including the HCS settings transition plan, or if you have questions, need additional information, or want to submit comments regarding this amendment or the HCS settings transition plan, you may contact Camille Weizenbaum by U.S. mail, telephone, fax, or email follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

(512) 487-3403

Attention: Camille Weizenbaum, Waiver Coordinator

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

The HHSC local offices will post this notice for 30 days.

TRD-201904031

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 30, 2019

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Amended Notice

THIS NOTICE WAS ORIGINALLY PUBLISHED IN THE NOVEMBER 1, 2019, ISSUE OF THE *TEXAS REGISTER*. THE ORIGINAL NOTICE INDICATED TWO PROPOSED EFFECTIVE DATES FOR THE WAIVER AMENDMENT: MARCH 9, 2019, AND MARCH 9, 2020. THE PRESENT NOTICE IS A CORRECTION TO REFLECT THE ACTUAL PROPOSED EFFECTIVE DATE OF MARCH 9, 2020.

Texas Home Living (TxHmL) waiver program amendment effective March 9, 2020.

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Texas Home Living (TxHmL) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2022. The proposed effective date for this amendment is March 9, 2020.

This request proposes to amend the waiver as follows:

Appendix B

Changing interest list procedures for individuals who lose eligibility for the Medically Dependent Children Program, to comply with Senate Bill 1207 of the 86th Texas Legislature.

Revising the terminology for the Medicaid eligibility groups for consistency with payment codes.

Appendix C

Correcting the licensing chapter for Behavioral Support service providers.

Correcting the licensing chapter for dentists as Dental service providers and add dental hygienist as Dental service providers.

Appendix D

Removing measure D.b.1, relating to number and percent of face-to-face utilization reviews conducted according to HHSC policies and procedures, which CMS no longer requires states to report.

Removing measure D.e.1, relating to the number and percent of individuals who were afforded choice between waiver services and institutional care during enrollment or service plan renewal, which CMS no longer requires states to report.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix E

Clarifying the budget authority for participants in the consumer-directed services option around requests to change the budget by the participant.

Appendix F

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities (CRS/CRID) with Intellectual and

Developmental Disability Ombudsman (IDD Ombudsman) to reflect organizational changes at HHSC.

Appendix G

Replacing the term "adult daycare" with "day activity health services" to reflect a change in state law.

Replacing references to Consumer Rights and Services/Consumer Rights Intellectual Disabilities with references to Intellectual and Developmental Disability Ombudsman to reflect organizational changes at HHSC.

Appendix H

Specifying the type of survey tool the state uses to measure an individual's experience of care and quality of life.

These changes will not have an impact on cost neutrality of the TxHmL waiver program.

The complete waiver amendment request can be found online on the Health and Human Services website at: https://hhs.texas.gov/laws-regulations/policies-rules/waivers/txhml-waiver-applications.

TxHmL provides essential community-based services and supports to individuals with Intellectual and Developmental Disabilities (IDD) living in their own homes or with their families. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to enhance, rather than replace, existing informal or formal supports and resources. Services include day habilitation, respite, supported employment, financial management services, support consultation, adaptive aids, audiology services, behavioral support, community support, dental treatment, dietary service, employment assistance, minor home modifications, occupational therapy services, physical therapy services, nursing, and speech-language pathology.

An individual may obtain a free copy of the proposed waiver amendment, including the TxHmL settings transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the TxHmL settings transition plan, by contacting Camille Weizenbaum by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

Attention: Camille Weizenbaum, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

The HHSC local offices will post this notice for 30 days.

TRD-201904032

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 30, 2019

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Amended Notice

THIS NOTICE WAS ORIGINALLY PUBLISHED IN THE NOVEMBER 1, 2019, ISSUE OF THE *TEXAS REGISTER*. THE ORIGINAL NOTICE INDICATED THAT HHSC WAS REMOVING PERFORMANCE MEASURE D.E.1, RELATING TO THE NUMBER AND PERCENT OF INDIVIDUALS WHO WERE AFFORDED CHOICE AMONG WAIVER PROVIDERS DURING ENROLLMENT. THIS MEASURE IS NOT BEING DELETED FROM THE WAIVER APPLICATION.

Deaf Blind with Multiple Disabilities (DBMD) waiver amendment effective March 9, 2020.

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Deaf Blind with Multiple Disabilities (DBMD) waiver administered under section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2023. The proposed effective date for the amendment is March 9, 2020.

The request proposes to amend the waiver as follows:

Appendix B

Changing interest list procedures for individuals who lose eligibility for the Medically Dependent Children Program, to comply with Senate Bill 1207 of the 86th Texas Legislature.

Appendix C

Correcting the licensing chapter for Behavioral Support service providers.

Correcting the licensing chapter for dentists as Dental service providers and adding dental hygienists as Dental service providers.

Appendix E

Clarifying the budget authority for participants in the consumer-directed services option around requests to change the budget by the participant.

The DBMD waiver program serves individuals with legal blindness, deafness, or a condition that leads to deaf-blindness, and at least one additional disability that limits functional abilities. The program serves individuals in the community who would otherwise require care in an intermediate care facility for individuals with intellectual disability or a related condition. These changes will not have an impact on cost neutrality of the DBMD waiver program.

If you want to obtain a free copy of the proposed request to amend the waiver, including the DBMD settings transition plan, or if you have questions, need additional information, or want to submit comments regarding this amendment or the DBMD settings transition plan, you may contact Camille Weizenbaum by U.S. mail, telephone, fax, or email as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

(512) 487-3403

Attention: Camille Weizenbaum, Waiver Coordinator

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

The HHSC local offices will post this notice for 30 days.

The complete request to amend the waiver can be found online on the HHSC website at https://hhs.texas.gov/laws-regulations/policies-rules/waivers/dbmd-waiver-applications.

TRD-201904033
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 30, 2019

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Notice of Public Hearing on Proposed Medicaid Payment Rates for Indian Health Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 18, 2019, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Indian Health Services.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC also will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Indian Health Services are proposed to be effective January 1, 2019.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code, §355.8620, which addresses the reimbursement methodology for Services Provided in Indian Health Service and Tribal Facilities.

Briefing Packet. A briefing packet describing the proposed payment rates will be available at http://rad.hhs.texas.gov/rate-packets on or after November 4, 2019. Interested parties may obtain a copy of the briefing packet on or after November 4, 2019, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201903896
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 24, 2019

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 18, 2019, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective January 1, 2020, for the following services:

Auditory System Surgery

Blood Products

Ear, Nose, and Throat

K Codes (power wheelchairs, wheelchair accessories, and other supplies)

Male Genital System Surgery

Musculoskeletal System Surgery

Nuclear Medicine

Pulmonary Services

Q Codes (batteries, power supplies, and related accessories)

R Codes (portable x-ray services)

Radiation Oncology

Radiopharmaceuticals

Intravenous Treatment and Chemotherapy

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps); and

§355.8620, which addresses the reimbursement methodology for services provided in Indian Health Service and Tribal Facilities.

Briefing Packet. A briefing packet describing the proposed payments rates will be available at https://rad.hhs.texas.gov/rate-packets on or after November 4, 2019. Interested parties may obtain a copy of the briefing packet on or after November 4, 2019, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201903892
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 23, 2019

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Continuous Glucose Monitoring

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 18, 2019, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Continuous Glucose Monitoring.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Continuous Glucose Monitoring are proposed to be effective January 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code, §355.8023, which addresses the reimbursement methodology for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).

Briefing Packet. A briefing packet describing the proposed payments rates will be available at https://rad.hhs.texas.gov/rate-packets on or after November 4, 2019. Interested parties may obtain a copy of the briefing packet on or after November 4, 2019, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201903894
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 23, 2019

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Fetal Magnetic Resonance Imaging (MRI)

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 18, 2019, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Fetal Magnetic Resonance Imaging (MRI).

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Fetal Magnetic Resonance Imaging (MRI) are proposed to be effective January 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Packet. A briefing packet describing the proposed payments rates will be available at https://rad.hhs.texas.gov/rate-packets on or after November 4, 2019. Interested parties may obtain a copy of the briefing packet on or after November 4, 2019, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201903893
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 23, 2019

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Vision Services Nonsurgical

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 18, 2019, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Vision Services Nonsurgical.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Vision Services Nonsurgical are proposed to be effective January 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8001, which addresses reimbursement for Vision Care Services;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services (known in Texas as Texas Health Steps).

Briefing Packet. A briefing packet describing the proposed payments rates will be available at https://rad.hhs.texas.gov/rate-packets on November 4, 2019. Interested parties may obtain a copy of the briefing packet on or after November 4, 2019, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201903895
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 23, 2019

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Quarterly Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 18, 2019, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Quarterly HCPCS Updates.

The public hearing will be held in the HHSC Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Quarterly HCPCS Updates are proposed to be effective January 1, 2020, for Physician Administered Drugs.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Packet. A briefing packet describing the proposed payment rates will be available at https://rad.hhs.texas.gov/rate-packets on November 4, 2019. Interested parties may obtain a copy of the briefing packet on or after November 4, 2019, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201903897
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 24, 2019

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Department of State Health Services

Notification of Meat Safety Assurance Penalty Matrix

Texas Health and Safety Code, Chapter 433, authorizes the Department of State Health Services (department) to regulate the slaughter, processing, sale, and distribution in intrastate commerce of meat and poultry products in Texas. The goals are to protect the health and welfare of consumers by assuring that meat and meat food products distributed to them are wholesome, unadulterated, and properly marked, labeled, and packaged and ensure humane treatment of animals. To achieve these goals, the department performs routine inspections, complaint investigations, and other regulatory activities. The department has rulemaking authority under the Texas Meat and Poultry Inspection Act (Act), Texas Health and Safety Code §433.008. The Act gives the department authority to prescribe rules and regulations describing sanitation requirements for inspected establishments. The department's rules are promulgated in Texas Administrative Code, Title 25, Part 1, Chapter 221, Meat Safety Assurance, Subchapter B, Meat and Poultry Inspection. The department has authority under §433.094 of the Act to prescribe and assess administrative penalties to enforce violations of laws and rules. The Act also provides department personnel the authority to refuse to allow meat or meat food products, or poultry products, to be labeled, marked, stamped, or tagged as "inspected and passed," and to prevent the entry of products into commerce when conditions of an establishment are such that products are adulterated. If the sanitary conditions of a facility are not maintained, the department can refuse to render inspection and indefinitely withdraw inspection from an establishment, provided the establishment is afforded the right to an administrative hearing.

The department may take a withholding action or impose a suspension, without prior notification if deemed necessary to ensure compliance with the Act and rules in Texas Administrative Code, Title 25, Part 1, Chapter 221, Subchapter B. The department publishes the Meat Safety Assurance Penalty Matrix (matrix) to inform the public and the regulated industry about the department's enforcement policies. The penalties are scaled into five levels based on the public health significance of each potential occurrence and the levels are set forth in the matrix to promote compliance with the Act and rules in Texas Administrative Code, Title 25, Part 1, Chapter 221, Subchapter B, promote public health, and confidence in the industry. The matrix promotes transparency in the department's regulatory efforts to protect Texas consumers, and provides notice of anticipated penalty assessments when regulatory standards are not met. Severity of a violation is determined by the following principles.

Severity 1 violations are reserved for cases where harm has been done due to the violation. Examples of Severity 1 violations would be practices by the violator that jeopardized public health that lead to confirmed illnesses. This could include illnesses caused by product contamination or by failure to properly label product containing allergens. Some cases of intentional animal cruelty may also be determined to be Severity 1 cases.

Severity 2 violations are cases where noncompliant practices by a violator lead to harmful products being entered into commerce, but do not lead to illness. This could include product contamination or failure to properly label product containing allergens. Some cases of intentional animal cruelty may also be determined to be Severity 2 cases.

Severity 3 violations are cases where noncompliant practices by a violator create significant risk for production of adulterated product in the production environment. This could include contamination in the production environment, production of product without inspection (when inspection is required) or failure by the establishment to correct noncompliant deficiencies in the production environment that directly involve product safety. Another example of a Severity 3 violation would be fraudulent practices that result in public health risk or improper monetary gain of over $1,000 by the violator. Some cases of intentional animal cruelty may also be determined to be Severity 3 cases.

Severity 4 violations are cases where noncompliant practices by a violator create risk for production of adulterated product in the production environment. This could include failure by the establishment to correct noncompliant deficiencies in the production environment that deal with product handling or product contact surfaces. Additional examples of Severity 4 violations would be negligent fraudulent practices that result in improper monetary gain of under $1,000 by the violator. Some cases of negligent inhumane slaughter, handling, or treatment of an animal may also be determined to be Severity 4 cases.

Severity 5 violations are cases where minor noncompliant practices by a violator create some risk for production of adulterated product in the production environment. This could include failure by the establishment to correct minor noncompliant deficiencies in the production environment that do not involve product handling or product contact surfaces. An additional example of a Severity 5 violation would be a fraudulent practice that is not reasonably determined to result in public health risk or improper monetary gain by the violator. Instances where there is a failure to correct noncompliance related to humane slaughter, handling, or treatment of animals may also be determined to be Severity 5 cases.

As part of its commitment to the protection of public health, notice to the regulated industry, and meat and poultry safety in Texas, the department publishes the matrix to encourage consistent, uniform, and fair assessment of penalties by the department for violations of the rules

promulgated in Texas Administrative Code, Title 25, Part 1, Chapter 221, Subchapter B. The list of violations in the matrix provides a corresponding citation to the appropriate section of the rules for each violation.

Under §433.094(b), the department shall consider the following when assessing the amount of a penalty: (1) the person's previous violations; (2) the seriousness of the violation; (3) any hazard to the health and safety of the public; (4) the person's demonstrated good faith; and (5) such other matters as justice may require.

The department may offer to settle disputed claims as deemed appropriate, through various means including, but not limited to, informal conference, reduced penalty amounts, or other appropriate lawful means, subject to approval of the commissioner, on a case-by-case basis. In addition to administrative penalties, the department may revoke or suspend an establishment's grant(s) of inspection or custom exemption. All decisions made by the department related to violations of Texas Administrative Code, Title 25, Part 1, Chapter 221, Subchapter B are based on circumstances at the time of inspection.

The proposed matrix may be reviewed and revised from time to time. This matrix shall be effective immediately upon publication in the *Texas Register* and shall further define the current department procedures for assessing administrative penalties for violations of Texas Administrative Code, Title 25, Part 1, Chapter 221, Subchapter B.

Violation	Texas Health & Safety Code Section	Texas Administrative Code Section	Severity Level	First Violation (Within a 3 year period)	Second Violation (Within a 3 year period)	Third Violation (Within a 3 year period)
Adulteration	**433.004**					
Product contains a substance that renders it unsound, unhealthy, unwholesome, or otherwise unfit for human food.	433.004		If Associated With Confirmed Illness: L - I	$10,001 + possible revocation	$17,500 + possible revocation	$25,000 + possible revocation
			If Associated With Proven Harmful Product in Commerce but no confirmed illness: L - II	$6,251	$8,125 + possible revocation	$10,000 + possible revocation
			All Other: L - III	$3,751	$5,125	$6,250 + possible revocation
Product is prepared, packed, or held under insanitary conditions.	433.004		In Associated With Proven Harmful Product in Commerce: L - II	$6,251	$8,125 + possible revocation	$10,000 + possible revocation
			All Other: L - III	$3,751	$5,125	$6,250 + possible revocation
Economic adulteration – Misleading packaging or labeling.	433.004		If over $1000: L-III	$3,751	$5,125	$6,250 + possible revocation
			If under $1000: L - IV	$1,251	$2,500	$3,750 + possible revocation
			If incidental L-V	$100	$675	$1,250 + possible revocation
Economic adulteration – Misleading packing, net weight, or added substance to make product appear better or of greater value than it is.	433.004		If over $1000: L-III	$3,751	$5,125	$6,250 + possible revocation
			If under $1000: L - IV	$1,251	$2,500	$3,750 + possible revocation

Misbranding	**433.005**					
Incomplete labeling	433.005		L-V	$100	$675	$1,250 + possible revocation
False or Misleading Labeling, Inaccurate or Incomplete Ingredients Statement	433.005		If over $1000: L-III	$3,751	$5,125	$6,250 + possible revocation
			If under $1000: L - IV	$1,251	$2,500	$3,750 + possible revocation
			If incidental L-V	$100	$675	$1,250 + possible revocation
Product offered for sale/sold with no labeling.	433.005		If over $1000: L-III	$3,751	$5,125	$6,250 + possible revocation
			If under $1000: L - IV	$1,251	$2,500	$3,750 + possible revocation
			If incidental L-V	$100	$675	$1,250 + possible revocation
Livestock carcass stamp/label illegible.	433.005		L-V	$100	$675	$1,250 + possible revocation
Purports to be or is represented as a food for which a standard of identity or composition has been prescribed but does not meet standard.	433.005		If over $1000: L-III	$3,751	$5,125	$6,250 + possible revocation
			If under $1000: L - IV	$1,251	$2,500	$3,750 + possible revocation
			If incidental L-V	$100	$675	$1,250 + possible revocation

Articles not intended for human consumption	**433.029**					
In Commerce (Lungs, Evicerates, Etc)			L-III	$3,751	$5,125	$6,250 + possible revocation
Failure to denature		221.14(a)10 221.14(b)11 9CFR 325.13	L-V	$100	$675	$1,250 + possible revocation
Records	**433.034**					
Incomplete records of business transactions or custom exempt operations.	433.034	221.14(a)(2)	L-V	$100	$675	$1,250 + possible revocation
No records of business transactions or custom exempt operations.	433.034	221.14(a)(2)	L-IV	$1,251	$2,500	$3,750 + possible revocation
Falsification of Record	433.091		L-III	3751 + Possible referral for criminal penalty	$5,125 + Possible referral for criminal penalty	$6,250 + possible revocation + Possible referral for criminal penalty
Protection Of Official Device, Mark, Or Certificate	**433.045**					
Using the official mark without department's authorization.	433.045		If public health risk or if Over $1000: L-III	$3,751	$5,125	$6,250 + possible revocation
			If no public health risk and under $1000: L - IV	$1,251	$2,500	$3,750 + possible revocation
			If incidental L-V	$100	$675	$1,250 + possible revocation
Knowingly represent an article as inspected and passed when it has not been.	433.045		L-III	$3,751	$5,125	$6,250 + possible revocation
Knowingly represent an article as exempted when it has not been.	433.045		L-III	$3,751	$5,125	$6,250 + possible revocation
Slaughter Not In Compliance With Chapter	**433.051**					
Slaughtering livestock without a grant of inspection or exemption.	433.051	221.12(c)	L-III	$3,751	$5,125	$6,250 + possible revocation
Processing of livestock carcass, meat, or meat food product without a grant of inspection or exemption.	433.051	221.12(c)	L-III	$3,751	$5,125	$6,250 + possible revocation

Sale, Receipt, Transportation Of Meat Not In Compliance With Chapter	**433.052**					
Offering for sale uninspected meat or meat food product.	433.052		L-III	$3,751	$5,125	$6,250 + possible revocation
Offering for sale adulterated or misbranded meat or meat food product.	433.052		If Associated With Confirmed Illness: L - I	$10,001 + possible revocation	$17,500 + possible revocation	$25,000 + possible revocation
			If Associated With Proven Harmful Product in Commerce but no confirmed illness: L - II	$6,251	$8,125 + possible revocation	$10,000 + possible revocation
			All Other: L - III	$3,751	$5,125	$6,250 + possible revocation
Perform and act that causes or is intended to cause a meat or meat food product to become adulterated or misbranded.	433.052		If Associated With Confirmed Illness: L - I	$10,001 + possible revocation	$17,500 + possible revocation	$25,000 + possible revocation
			If Associated With Proven Harmful Product in Commerce but no confirmed illness: L - II	$6,251	$8,125 + possible revocation	$10,000 + possible revocation
			All Other: L - III	$3,751	$5,125	$6,250 + possible revocation
Sale, Receipt, Transportation Of Poultry.	**433.053**					
Sale, transportion, offering for sale or transportation, or receiving for transportation, poultry from which blood, feathers, feet, head, or viscera have not been removed.	433.053		If Associated With Confirmed Illness: L - I	$10,001 + possible revocation	$17,500 + possible revocation	$25,000 + possible revocation
			If Associated With Proven Harmful Product in Commerce: L - II	$6,251	$8,125 + possible revocation	$10,000 + possible revocation
			All Other: L - III	$3,751	$5,125	$6,250 + possible revocation
Inhumane Slaughter, Handling, or Treatment of Animals		**221.11(a)(11)**	Intentional cruelty to an animal: L - I/II/III	$10,001 + possible revocation + possible referral for criminal penalty	$17,500 + possible revocation + possible referral for criminal penalty	$25,000 + possible revocation + possible referral for criminal penalty
				$6,251 + possible referral for criminal penalty	$8,125 + possible revocation + possible referral for criminal penalty	$10,000 + possible revocation + possible referral for criminal penalty
				$3751 + possible referral for criminal penalty	$5,125 + possible referral for criminal penalty	$6,250 + possible revocation + possible referral for criminal penalty

	Negligent inhumane slaughter, handling, or treatment of an animal: L - IV	$1,251	$2,500	$3,750 + possible revocation
	Failure to correct noncompliance related to humane slaughter, handling, or treatment of animals: L - V	$100	$675	$1,250 + possible revocation

TRD-201904028
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: October 30, 2019

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Public Notice of Demolition/Reconstruction of South Bluff Apartments

South Bluff Apartments is a 35-unit affordable multifamily complex located on 1.07 acres at 509 S. Carancahua St., Corpus Christi, Texas. The 37-year-old two-story complex currently consists of 25 1-bedroom and 10 2-bedroom units. The new property - to be known as Avanti Legacy at South Bluff - will be 4 stories, and consist of 30 1-bedroom and 12 2-bedroom units for a total of 42 units. Demolition is anticipated to begin in February 2020, and all units are anticipated to be reconstructed by April 2021. It is anticipated that all residents will be permanently displaced as a result of reconstruction occurring over a 14-month period. Funding is provided through Low Income Housing Tax Credit (LIHTC) equity from RBC Capital Markets with HOME funding provided by The Texas Department of Housing and Community Affairs, along with deferred developer fee and contractor loyalty contribution. All 42 units will remain lower income dwelling units for 35 years from the date of initial occupancy as recorded in the Development's HOME and LIHTC Land Use Restriction Agreements.

Public Comment Period

Starts at 8:00 a.m. Austin local time on November 8, 2019.

Ends at 5:00 p.m. Austin local time on November 21, 2019.

Comments received after 5:00 p.m. Austin local time on November 21, 2019, will not be accepted.

Written comments may be submitted to:

Texas Department of Housing and Community Affairs

Attn: Carmen Roldan, South Bluff Apartments

P.O. Box 13941 Austin, Texas 78711-3941

Email: carmen.roldan@tdhca.state.tx.us

Written comments may be submitted in hard copy or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific rule, policy, or plan related to their comment, as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

Las personas que no pueden hablar, leer, escribir o entender el idioma inglés pueden llamar al (512) 475-3800 o al número de llamada gratuita (800) 525-0657 para solicitar asistencia con la traducción de documentos, eventos u otra información del Departamento de Vivienda y Asuntos Comunitarios de Texas (Texas Department of Housing and Community Affairs).

Quédese en la línea y permanezca en silencio durante nuestras indicaciones automatizadas de voz en inglés hasta que un representante responda. El representante lo pondrá en espera y le comunicará con un intérprete para ayudarle con su llamada.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Street Address: 221 East 11th Street, Austin, Texas 78701

Mailing Address: P.O. Box 13941, Austin, Texas 78711-3941

Main Number: (512) 475-3800

Toll Free: (800) 525-0657

Email: info@tdhca.state.tx.us

Web: www.tdhca.state.tx.us

Location of 35 lower-income dwelling units that will be demolished

TRD-201904030
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 30, 2019

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Nationwide Assurance Company, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Application to do business in the state of Texas for Supreme Council of the Royal Arcanum, a foreign life, accident and/or health company. The home office is in Boston, Massachusetts.

Application to do business in the state of Texas for Mobilitas General Insurance Company, a foreign fire and/or casualty company. The home office is in Glendale, Arizona.

Application for Executive Insurance Company, a foreign fire and/or casualty company, to change its name to Gramercy Indemnity Company. The home office is in Uniondale, New York.

Application for Advantage Workers Compensation Insurance Company, a foreign fire and/or casualty company, to change its name to WCF National Insurance Company. The home office is in Sandy, Utah.

Application for Partnerre Insurance Company of New York, a foreign fire and/or casualty company, to change its name to Cerity Insurance Company. The home office is in New York, New York.

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 Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201904027
James Person
General Counsel
Texas Department of Insurance
Filed: October 30, 2019

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission published notice of the procedures for Scratch Ticket Game Number 2185 "HOLIDAY CHEER" in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6437). Due to an error by the Texas Register, the notice was formatted incorrectly. The notice should have been formatted as follows:

Scratch Ticket Game Number 2185 "HOLIDAY CHEER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2185 is "HOLIDAY CHEER". The play style is "row".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2185 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2185.

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: WREATH SYMBOL, STOCKING SYMBOL, HORN SYMBOL, SLEIGH SYMBOL, DRUM SYMBOL, SKATE SYMBOL, NUTCRACKER SYMBOL, REINDEER SYMBOL, BELL SYMBOL, STAR SYMBOL, ANGEL SYMBOL, IGLOO SYMBOL, TREE SYMBOL, PENGUIN SYMBOL, CANDY CANE SYMBOL, HOLLY SYMBOL, MITTEN SYMBOL, SNOWMAN SYMBOL, CANDLE SYMBOL, GINGERBREAD MAN SYMBOL, SNOWFLAKE SYMBOL, ORNAMENT SYMBOL, TRAIN SYMBOL, GIFT SYMBOL, CABIN SYMBOL, $2.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2185 - 1.2D

PLAY SYMBOL	CAPTION
WREATH SYMBOL	WREATH
STOCKING SYMBOL	STCKNG
HORN SYMBOL	HORN
SLEIGH SYMBOL	SLEIGH
DRUM SYMBOL	DRUM
SKATE SYMBOL	SKATE
NUTCRACKER SYMBOL	NUTCKR
REINDEER SYMBOL	REINDR
BELL SYMBOL	BELL
STAR SYMBOL	STAR
ANGEL SYMBOL	ANGEL
IGLOO SYMBOL	IGLOO
TREE SYMBOL	TREE
PENGUIN SYMBOL	PNGUIN
CANDY CANE SYMBOL	CNDYCN
HOLLY SYMBOL	HOLLY
MITTEN SYMBOL	MITTEN
SNOWMAN SYMBOL	SNMAN
CANDLE SYMBOL	CANDLE
GINGERBREAD MAN SYMBOL	GNGRBD
SNOWFLAKE SYMBOL	SNWFLK
ORNAMENT SYMBOL	ORNMNT
TRAIN SYMBOL	TRAIN
GIFT SYMBOL	WIN
CABIN SYMBOL	WIN$50
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2185), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2185-0000001-001.

H. Pack - A Pack of the "HOLIDAY CHEER" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HOLIDAY CHEER" Scratch Ticket Game No. 2185.

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 "HOLIDAY CHEER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose thirty (30) Play Symbols. If a player reveals 5 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If the player reveals a "GIFT" Play Symbol in any GAME, the player wins the PRIZE for that GAME instantly. If the player reveals a "CABIN" Play Symbol in any GAME, the player WINS $50 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 thirty (30) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly thirty (30) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the thirty (30) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the thirty (30) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $30,000 will each appear at least once, except on Tickets winning more than three (3) times, with respect to other parameters, play action or prize structure.

D. A Ticket can win up to five (5) times: once in each GAME.

E. On all Tickets, non-winning Prize Symbols will all be different.

F. The play area consists of twenty-five (25) Play Symbols and five (5) Prize Symbols.

G. There will never be five (5) matching Play Symbols in a vertical or diagonal line.

H. Consecutive Non-Winning Tickets within a Pack will not have matching GAMES. For instance, if the first Ticket contains a Star Play Symbol, Bell Play Symbol, Drum Play Symbol, Horn Play Symbol and Sleigh Play Symbol in any GAME, then the next Ticket may not contain a Star Play Symbol, Bell Play Symbol, Drum Play Symbol, Horn Play Symbol and Sleigh Play Symbol in any GAME in any order.

I. Non-Winning Tickets will not have matching GAMES. For instance, if GAME 1 is the Star Play Symbol, Bell Play Symbol, Drum Play Symbol, Horn Play Symbol and Sleigh Play Symbol, then GAME 2 through GAME 5 will not contain the Star Play Symbol, Bell Play Symbol, Drum Play Symbol, Horn Play Symbol and Sleigh Play Symbol in any order.

J. Winning Tickets will contain one or more of the following combinations: five (5) matching Play Symbols in a horizontal GAME, one (1) "GIFT" (WIN) Play Symbol and four (4) Play Symbols that do not match in a horizontal GAME, or one (1) "CABIN" (WIN$50) Play Symbol and four (4) Play Symbols that do not match in a horizontal GAME.

K. The "GIFT" (WIN) Play Symbol will win the PRIZE for that GAME.L. The "CABIN" (WIN$50) Play Symbol will win $50 instantly.

M. The "CABIN" (WIN$50) Play Symbol will never appear more than once on a Ticket.

N. The "GIFT" (WIN) and "CABIN" (WIN$50) Play Symbols will never appear on Non-Winning Tickets.

O. The "GIFT" (WIN) and "CABIN" (WIN$50) Play Symbols will never appear in the same GAME.

P. On Tickets winning using either the "GIFT" (WIN) or the "CABIN" (WIN$50) Play Symbols, the remaining Play Symbols in the same GAME will not match.

Q. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY CHEER" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 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 $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY CHEER" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY CHEER" 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;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HOLIDAY CHEER" 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 "HOLIDAY CHEER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2185. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2185 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	902,400	7.98
$4.00	364,800	19.74
$5.00	96,000	75.00
$10.00	307,200	23.44
$20.00	76,800	93.75
$50.00	16,200	444.44
$100	480	15,000.00
$1,000	10	720,000.00
$30,000	5	1,440,000.00

*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 4.08. 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. 2185 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. 2185, 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.

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Scratch Ticket Game Number 2190 "PREMIER PLAY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2190 is "PREMIER PLAY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2190 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2190.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03,

04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, MONEY BAG SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $50.00, $100, $200, $500, $1,000, $2,000, $10,000 and $5,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2190 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON

42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
MONEY BAG SYMBOL	WIN
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$2,000	TOTH
$10,000	10TH
$5,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2190), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2190-0000001-001.

H. Pack - A Pack of the "PREMIER PLAY" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

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 "PREMIER PLAY" Scratch Ticket Game No. 2190.

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 "PREMIER PLAY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-six (76) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 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 seventy-six (76) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-six (76) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-six (76) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-six (76) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty-five (35) times.

D. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

E. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

F. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

G. On winning and Non-Winning Tickets, the top cash prizes of $1,000, $10,000 and $5,000,000 will each appear at least once, except on Tickets winning thirty-five (35) times and with respect to other parameters, play action or prize structure.

H. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

I. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

J. The "MONEY BAG" (WIN) Play Symbol will never appear on the same Ticket as the "2X" (WINX2), "5X" (WINX5), "10X" (WINX10) or "20X" (WINX20) Play Symbols.

K. A "2X" (WINX2) Play Symbol will never appear more than three (3) times on a Ticket.

L. The "2X" (WINX2) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

M. The "2X" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

N. The "2X" (WINX2) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

P. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

Q. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

R. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

S. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

T. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

U. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

V. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

W. The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

X. The "20X" (WINX20) Play Symbol will never appear more than once on a Ticket.

Y. The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

Z. The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

AA. The "MONEY BAG" (WIN) Play Symbol will win the prize for that Play Symbol.

BB. The "MONEY BAG" (WIN) Play Symbol will never appear more than once on a Ticket.

CC. The "MONEY BAG" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

DD. The "MONEY BAG" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "PREMIER PLAY" Scratch Ticket Game prize of $50.00, $100, $200 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, $200 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 "PREMIER PLAY" Scratch Ticket Game prize of $1,000 or $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. To claim a "PREMIER PLAY" Scratch Ticket Game top level prize of $5,000,000, the claimant must sign the winning Scratch Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. As an alternative method of claiming a "PREMIER PLAY" Scratch Ticket Game prize, with the exception of the top level prize of $5,000,000, 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.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. 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 "PREMIER PLAY" 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 "PREMIER PLAY" 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 5,400,000 Scratch Tickets in Scratch Ticket Game No. 2190. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2190 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50	675,000	8.00
$100	675,000	8.00
$200	216,000	25.00
$500	85,500	63.16
$1,000	6,300	857.14
$10,000	225	24,000.00
$5,000,000	3	1,800,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.26. 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. 2190 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. 2190, 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-201904010
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 29, 2019

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Public Utility Commission of Texas

Notice of Application for True-Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 22, 2019, for true-up of 2017 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Community Telephone Company, Inc. for True Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 50121.

The Application: Community Telephone Company, Inc. (CTC) filed a true-up report in accordance with Findings of Fact Nos. 16, 17, and 19 of the final Order in Docket No. 47813. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that CTC received in Federal Universal Service Fund (FUSF) revenue by $254,853 for calendar year 2017. The projected reduction in FUSF revenue was expected to be offset by $74,953 in rate increases that CTC has implemented in 2017, and $179,900 from the Texas Universal Service Fund (TUSF). The final Order required a true-up of the actual 2017 revenue reductions. As a result of that true-up, CTC now asserts it is due to refund the TUSF in the amount of $68,120.

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 50121.

TRD-201904007
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2019

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Notice of Hearing on the Merits

APPLICATION: Joint Report and Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP for Regulatory Approvals Under PURA §§14.101, 39.262, and 39.915, Docket No. 49849

El Paso Electric Company (EPE), Sun Jupiter Holdings LLC (Sun Jupiter), and IIF US Holding 2 LP filed a joint report and application for regulatory approval of a merger agreement whereby Sun Merger Sub Inc. will merge with and into EPE, with EPE continuing as the surviving corporation, and EPE becoming a direct wholly-owned subsidiary of Sun Jupiter.

HEARING ON THE MERITS: The Public Utility Commission of Texas will convene the hearing on the merits of the application at the Commission's offices at 10:00 a.m., November 20, 2019, 1701 N. Congress Avenue, Austin, Texas 78701. The hearing is scheduled to continue on November 21 and 22, starting at 9:00 a.m. on each of those days. The Commissioners have agreed to hear the case rather than referring it to the State Office of Administrative Hearings.

The Commission will consider evidence on whether to affirm, modify, or set aside the application. The hearing will be conducted in accordance with PURA and Commission rules in 16 Texas Administrative Code chapters 22 and 25.

Persons planning to attend this hearing who have disabilities requiring auxiliary aids or services should notify the Commission as far in advance as possible so that appropriate arrangements can be made. Requests can be made by mail, telephone or in person to the Commission's Office of Customer Protection, 1701 N. Congress Ave., Austin, Texas 78701, phone number (512) 936-7150 or (512) 936-7136 for the teletypewriter for the deaf.

TRD-201904016
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: October 29, 2019

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Notice of Intent to File LRIC Study Under 16 TAC §26.214

Notice is given to the public of the filing on October 15, 2019, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study under 16 Texas Administrative Code (TAC) §26.214. The applicant will file the LRIC study on or before November 11, 2019.

Docket Title and Number: Application of Consolidated Communications of Texas for Approval of LRIC Study Under 16 TAC §26.214, Docket No. 50053.

Any party that demonstrates a justiciable interest may file written comments or recommendations concerning the LRIC study referencing Docket No. 50053. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the commission, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50053.

TRD-201904021
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2019

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Texas Department of Transportation

Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

The City of Hillsboro, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Hillsboro; TxDOT CSJ No.: 2009HILLS. The TxDOT Project Manager is Robert Johnson, P.E.

Scope: Provide engineering and design services, including construction administration, to:

1. replace medium intensity runway lights Runway 16-34;

2. replace precision approach path indicators-2 Runway 16;

3. install precision approach path indicators-2 Runway 34;

4. replace windcone; and

5. replace airfield guidance signs.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is **7%.** The goal will be re-set for the construction phase.

A voluntary pre-submittal meeting is scheduled from **10:00 am - noon on November 19, 2019,** at Hillsboro Municipal Airport, 1000 Airport Blvd., Suite 101, Hillsboro, Texas 76645. There will be an opportunity for interested firms to ask questions followed by an airport site visit.

This is the only available time for interested firms to visit with local designated representatives prior to the AVN-550 submission.

The City of Hillsboro reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, project diagram, and most recent Airport Layout Plan are available online at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm* by selecting "Hillsboro Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than **December 03, 2019, 11:59 p.m.** Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at http://txdot.gov/government/funding/egrants-2016/aviation.html

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each.

The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68- PILOT (74568). For procedural questions, please contact Anna Ramirez, Grant Manager. For technical questions, please contact Robert Johnson, P.E., Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or *avn-egrantshelp@txdot.gov.*

TRD-201903903
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: October 24, 2019

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Request for Proposals -- Traffic Safety Program

In accordance with 43 TAC §25.901 *et seq.,* the Texas Department of Transportation (TxDOT) is requesting project proposals to support the targets and strategies of its traffic safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These targets and strategies form the basis for the Federal Fiscal Year 2021 (FY 2021) Texas Highway Safety Plan (HSP).

Authority and responsibility for funding of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 USC §401 *et seq.),* and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Behavioral Traffic Safety Section (TRF-BTS) is an integral part of TxDOT and works through 25 districts for local projects. The program is administered at the state level by TxDOT's Traffic Safety Division (TRF). The Executive Director of TxDOT is the designated Governor's Highway Safety Representative.

The following is information related to the FY 2021 General Traffic Safety Grants - Request for Proposals (RFP). Please review the full FY 2021 RFP located online at: *https://www.txdot.gov/apps/egrants/eGrantsHelp/RFP/RFP2021.pdf.*

This request for proposals does not include solicitations for Selective Traffic Enforcement Program (STEP) proposals. Information regarding STEP proposals for FY 2021 can be found at: *https://www.txdot.gov/apps/egrants/eGrantsHelp/RFP.html* and FY 2021 STEP proposals will be submitted under a separate process.

General Proposals for highway safety funding are due to the TRF-BTS no later than 5:00 p.m. CST, January 09, 2020.

All questions regarding the development of proposals must be submitted by sending an email to: TRF_RFP@txdot.gov by 12:00 p.m. (Noon) CST, on December 02, 2019. A list of the questions with answers (Q&A document) will be posted at: *https://www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html* by 5:00 p.m. CST, on December 06, 2019.

A webinar on general proposal submissions via the Traffic Safety eGrants system will be hosted by the TRF-BTS Austin headquarters staff. The webinar will be conducted on Wednesday, November 20, 2019, from 9:00 a.m. CST to 12:00 p.m. CST for General Traffic Safety Grant Proposals and from 1:00 p.m. to 4:00 p.m. CST for STEP Proposals. For access information please go to *https://www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html.*

The Program Needs Section of the RFP includes Performance Measures tables which outline the targets, strategies, and performance measures for each of the Traffic Safety Program Areas. TRF-BTS is seeking proposals in all program areas, but is particularly interested in proposals which address the specific program needs listed in the High Priority Program Needs subsection of the Program Needs Section of the RFP.

The proposals must be completed using eGrants, which can be found by going to *www.txdot.gov/apps/egrants.*

TRD-201903964
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: October 25, 2019

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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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